

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. <sup>6554</sup>~~3148~~ OF 2014  
(Against the Impugned final judgment and order dated  
22.08.2013 passed by the High Court of Punjab and  
Haryana at Chandigarh in CWP No. 3775 of 2009)

WITH PRAYER FOR INTERIM RELIEF

CIVIL APPEAL No. 4025 of 2014

IN THE MATTER OF

RAJEEV CHANDRASEKHAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

WITH

I.A. NO. \_\_\_\_\_ OF 2014

APPLICATION FOR PERMISSION TO BRING ADDITIONAL  
DOCUMENTS ON RECORD

AND

I.A. NO. \_\_\_\_\_ OF 2014

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED  
COPY OF THE IMPUGNED ORDER

AND

I.A. NO. \_\_\_\_\_ OF 2014

APPLICATION FOR CONDONATION OF DELAY IN FILING  
THE SLP

AND

I.A. NO. \_\_\_\_\_ OF 2014

APPLICATION FOR PERMISSION TO FILE  
SPECIAL LEAVE PETITION

PAPER BOOK

FOR INDEX KINDLY SEE INSIDE

ADVOCATE FOR THE PETITIONER:

MR. E.C. AGRAWALA

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A

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2014

IN THE MATTER OF :-

RAJEEV CHANDRASEKHAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

OFFICE REPORT ON LIMITATION

- 1) The appeal/petition is/are within time.
- 2) The appeal/petition is barred by time and there is delay of \_\_\_\_ days in filing the same against order dated \_\_\_\_\_ and application for condonation of \_\_\_\_ days delay has been filed.
- 3) There is delay of \_\_\_\_ days in re-filing the petition and petition for condonation of \_\_\_\_ days delay in re-filing has been filed.

BRANCH OFFICER

New Delhi

Dated: 11.2.2014

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### SYNOPSIS AND LIST OF DATES

The present Special Leave Petition is filed by the Petitioner against the Judgment and Order dated 22.08.2013 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 3775 of 2009 (hereinafter referred to as "**Impugned Order**"), whereby the Hon'ble High Court has dismissed the Public Interest Litigation, (hereinafter referred to as "**PIL**") instituted by the Proforma Respondent No.7 herein, who had been a former officer of the defence services. The PIL raised the issue of the plight of the defence personnel and their families who are posted outside their hometown and are unable to cast their votes depriving such individuals the right to participate in the election process of this country. While dismissing the PIL filed by the said officer, the Hon'ble High Court has held to the serious prejudice of the defence personnel that all due care has at all times been taken by the Election Commission (i.e. the Respondent No. 3 herein) to ensure that the statutory right of a voter is not frustrated.

The Petitioner herein is a citizen of India and has been an independent Member of the Rajya Sabha, since May 2006. The Petitioner was elected to the Rajya Sabha in 2006 and once again, re-elected unopposed in 2012. The Petitioner holds a Bachelor's degree in Electrical Engineering from the Manipal Institute of Technology, Mangalore University, Karnataka; a Master's Degree in Computer Science from Illinois Institute of Technology, Chicago (which has also

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recognised him as a distinguished Alumnus); and has attended Management Programmes at Harvard University, Boston. It must be noted herein that prior to being elected to the Parliament, he founded BPL Mobile, and was one of the pioneers in developing India's first and largest greenfield telecom infrastructure. BPL Mobile had invested in and built world-class telecom infrastructure in the metropolis of Mumbai and the circles of Maharashtra, Tamil Nadu and Kerala and laid the foundation of the telecom revolution in India.

Furthermore, it is humbly submitted that the Petitioner further has championed the cause of freedom of speech and expression of all classes of citizens, as a representative of the people and as a member of the political class who believes in the right of political dissent and right to express one's views. The Petitioner has initiated multiple public interest actions in the High Court of Karnataka and in the Supreme Court of India on a wide range of issues including land - both public and government, rights of local communities to public infrastructure; right to privacy and the right to freedom of expression vis-a-vis the internet and intrusive regulation of the internet by the State.

It is respectfully further submitted that the Petitioner has led a campaign inside and outside Parliament for setting up of a National Memorial to our armed forces in Delhi. As Chairman of the National Military Memorial Committee at his initiative Independent India's First Military Memorial is coming up in Bangalore. It is most respectfully submitted that as the founder trustee of Flags of Honour Foundation he has helped war widows, families of martyred soldiers,

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restored ParamVir Chakra winner Abdul Hameed's memorial in UP. It is further submitted that now he is leading a campaign to enable armed forces personnel to vote, and his petition to the Election Commission is available on [www.change.org](http://www.change.org) wherein he is presently advocating the cause through signatures and missed call campaign, which has evoked strong support from across the country.

The grievance of the Petitioner is that the Respondents have failed to initiate the process of making the electoral rolls for the defense and cantonment areas thereby failing to register the defense personnel and their families who have systematically been denied the exercise of their right to vote, despite being fully eligible to do so. It is most respectfully submitted that this process of making the electoral rolls for these areas had never been done despite a specific responsibility being laid by Sections 15, 21 and 22 of the Representation of People Act, 1950.

This Hon'ble Court in the matter of *Wopansao v. N.L. Odyuo & Ors.*, (1971) 2 SCC 550, which categorically recognised the right of a citizen with 'service qualification' to be enrolled as a voter in the constituency in which he is residing even though such place happens to be his place of service.

It is most respectfully submitted that the Election Commission of India had vide its Notification dated 20.03.1995, No. 24/95-P.S.II, issued to the Government of India with regard to the registration of persons having service qualifications stated that such citizens shall have the right to be enrolled as ordinary/general voters at their



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actual place of residence. However, vide a communication dated 28.12.2008, the Election Commission had thereafter stipulated that for being registered as an ordinary voter at their place of ordinary residence, 'service voters' are required to be posted for a minimum tenure posting of 3 years at a peace station. It is most respectfully submitted that such added conditionality for being registered at one's place of ordinary residence is *de hors* all constitutional and statutory requirements. It is further submitted that the said communication clearly provides that *'however, if a Service personnel serving at a peace station intends to register as a general voter, he can be registered as a general voter (as against Service voter) only if he is residing there with family for a sufficient span of time or provided he is on a tenure posting of 3 years or more in that peace station'*. It is most respectfully submitted that such a condition which has been sought to be imposed is in utter disregard to any of the provisions Acts or the Rules made thereunder. Thus, the said conditions are illegal and cannot be given effect to. It would not be out of place to mention herein that such a condition which has been imposed only upon Service Personnel is arbitrary since no such rule is applicable to any other class of migrant citizenry of this country.

It is respectfully submitted that although the earlier Special Army Order No. SAO-16/S/72 which restricted the right of service voters as regards their right to vote has been amended vide a subsequent Army Order No. A.O.15/95 which clearly specifies that the provisions of the election laws do not deprive any person having 'Service

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'Qualification' of the right to get enrolled as a general elector in the electoral roll of his place of posting if that place happens to be his actually place of ordinary residence.

It is most respectfully submitted that the Office of the Adjutant General Branch, Integrated Headquarters of Ministry of Defense (Army), New Delhi has through its communication dated 16.11.2007 admitted the practical problem associated with the inherent delay in the postal ballot system causing very poor participation of the service voters in the election process.

The Hon'ble High Court has proceeded erroneously on the premise 'that an individual's right to vote, being a statutory right cannot be enforced through a public interest litigation which is contrary to a number of decisions of this Hon'ble Court. It is most respectfully submitted that this Hon'ble Court in the matter of *Indian Banks' Association, Bombay & Ors. v. Devkala Consultancy Service & Ors.*, (2004) 11 SCC 1 has held that the jurisdiction of the superior Courts can surely be invoked to vindicate legal injury or legal wrong caused to a section of people by way of violation of any statutory or constitutional right. Under such circumstances, the Impugned Order is liable to be set aside.

It would not be out of place to mention herein that the Hon'ble High Court failed to take note of the communication from the Election Commission of India to the query of Proforma Respondent No.7, dated 01.09.2006, admitting that "the existing law does not

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*prescribe any period or minimum period in relation to the requirement of being "ordinary resident" in a constituency...". Furthermore, the Impugned Order has been passed in complete denial of the admission of the Election Commission in its communication dated 01.09.2006 that despite the existing law that service voters have been "generally left out" in cantonment areas. A relevant extract from the communication is being reproduced here, for the ease of reference:*

*"Item No.2: Has any house-to-house enumeration ever been done in armed Forces and Para-military Forces Areas and if not why not?"*

*Necessary instructions were issued vide Commission's letter No. 24/95-PS-II dated 20<sup>th</sup> March 1995, to authorities concerned with registration of service personnel and endorsed to the Chief Electoral Officers of all States / U.T.s. However, the legal position does not seem to have been adequately stressed upon the Electoral Registration Officer etc. concerned with registration of persons in the electoral roll. Therefore, during intensive revisions, house-to-house enumeration of persons living in cantonment areas and fulfilling the criterion laid down in reply to Question (A) above, and desiring to be enrolled as general electors in the place of posting, instead of availing the facility of fictional domicile to get enrolled in the last part of the roll at the native place, has been generally left out. The Commission has therefore again issued instructions reiterating the correct legal position about conducting house to house*

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*enumeration of eligible persons residing in cantonment area vide its letter No. 23/2006-PS-II, dated 14.07.2006 and has requested to bring to notice of all Electoral Registration Officers concerned for proper understanding and compliance in future."*

It is further submitted that the Hon'ble Division Bench has passed the impugned order in complete ignorance of the law laid down by this Hon'ble Court in the case of *A.C. Jose v. Sivan Pillai & Ors.*, (1984) 2 SCC 656, wherein this Honble Court has held that the Election Commission shall have no authority to pass orders in direct violation of the mandate contained in the Representation of the Peoples Act, 1950 or Rules thereunder. It is humbly submitted that in this view of the law, the Election Commission's imposition of an added conditionality of having a minimum tenure post of three years is unsustainable in law, a fact which was totally ignored by the Hon'ble High Court.

The Hon'ble High Court also failed to note the fact that imposition of such extra-statutory conditions on the registration of service voters is violative of Articles 14, 19(1)(d), 19(1)(e) and 326 of the Constitution of India and ought to be set aside.

I

## LIST OF DATES & EVENTS

### DATES

### EVENTS

- 1971 This Hon'ble Court pronounces its judgment in *Wopansao v. N.L. Odyuo & Ors.*, (1971) 2 SCC 550, categorically recognising the right of a citizen with 'service qualification' to be enrolled as a voter in the constituency in which he is residing though such place happens to be his place of service.
- 1972 Special Army Order No. SAO-16/S/72 is passed which states that Service Voters are authorised to vote only by postal ballot and not in any other manner. A copy of the abovementioned Special Army Order No. SAO-16/S/72 is annexed herewith and marked as **ANNEXURE P-1**. (At pages 39 to 46)
- 1995 Army Order No. A.O.15/95 amends SAO-16/S/72 specifying that the provisions of the election laws do not deprive any person having 'Service Qualification' of the right to get enrolled as a general elector in the electoral roll of his place of posting if that place happens to be his actually place of ordinary residence.

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20.03.1995 Election Commission of India notifies the Government of India vide Notification No. 24/95-P.S.II clarifying that service voters who do not wish to avail themselves of the fictional domicile under Section 20(8) of the Representation of the People Act, 1950 can get themselves registered as electors in their actual place of residence as general voters. A true copy of the communication of the Election Commission dated 20.03.1995 is annexed herewith and marked as ANNEXURE P-2. (At pages 47 to 50 )

01.09.2006 The Election Commission in a response to a RTI query admits that the existing law does not prescribe any minimum period in relation to the requirement of being an "ordinary resident" under the Representation of the People Act, 1950. Furthermore the Election Commission also admits that despite the existing law, service voters have generally been left out in cantonment areas.

A true copy of the response of the Election Commission to a RTI query dated 01.09.2006 is annexed herewith and marked as ANNEXURE P-3. (At pages 51 to 54 )

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16.11.2007 In response to letter addressed by the Proforma Respondent No.7 *inter alia* to the Secretary, Rajya Sabha, the office of the Adjutant General admitted the practical problem associated with the inherent delay in the postal ballot system causing very poor participation of the service voters in the election process. A copy of the response from the office of the Adjutant General dated 16.11.2007 is annexed herewith and marked as ANNEXURE P-4. (At pages 55 to 57)

28.12.2008 The Election Commission vide a communication to all Chief Electoral Officers of the States and U.T.s stipulates the condition of a minimum tenure posting of three years at a peace station for being eligible to be registered as an ordinary voter at such place. A true and correct copy of the communication of the Election Commission of India dated 28.12.2008 is annexed herewith and marked as ANNEXURE P-5. (At pages 58 to 60)

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26.2.2009 Proforma Respondent No.7 files a Public Interest Litigation before the Hon'ble High Court of Punjab & Haryana seeking directions to the Respondents to initiate the process of preparation of the Electoral Roll in Defence Areas. A copy of the writ petition being CWP (PIL) No.3775 of 2009 filed before the Hon'ble High Court of Punjab and Haryana at Chandigarh dated 26.2.2009 is annexed herewith and marked as **ANNEXURE P-6**. (At pages 61 to 73)

22.08.2013 The Hon'ble High Court of Punjab and Haryana dismissed the writ petition vide the Impugned Order dated 22.08.2013.

11.2.2014 Hence, the present Special Leave Petition



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 3775 of 2009  
Date of Decision : 22.8.2013

Brig. Hardeep Singh Ghuman (Shaurya Chakra) ..... Petitioner

Versus

Union of India and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr. Shireesh Gupta, Advocate, for the petitioner.

Mr. M.L. Sarin, Senior Advocate, with,  
Mr. Hemant Sarin, Advocate, for respondents No. 3 and 4.

Mr. Gaurav Garg Dhuriwala, Deputy Advocate General, Punjab,  
for respondent No. 7.

Mr. Ajay Gupta, Additional Advocate General, Haryana,  
for respondent No. 8.

AUGUSTINE GEORGE MASIH, J.

This Public Interest Litigation (PIL) has been preferred by a former officer of the defence services highlighting an alleged grievance and difficulty faced by the defence personnel and their families who are posted outside their home town and are unable to cast their votes and thus, depriving them participation in the election process of the country. The primary grievance highlighted is that the process of preparation of electoral rolls for all defence areas and cantonments are not carried out by the respondents depriving them of their valuable right to vote.

Petitioner states that he is a decorated retired officer of the Indian Army. The defence personnel and the dependent members of their families face a problem especially those who are posted away at far off places from their home town where they are unable to cast their votes and participate in the election process because of the enrollment drive of voters not being initiated and carried out by the respondents in the areas where the defence personnel reside i.e. the restricted areas. They are not even aware of the fact that they can be enrolled as voters at their place of posting if they so desire, nor are they educated with regard to the fact that they can cast their votes through proxy or by means of postal ballot. This is primarily because of lack of information supplied to them and inaction on the part of the Election Commission of India which has failed to initiate the process of preparation of electoral rolls within the defence areas. The option of casting vote by postal ballot due to delay of despatch of the ballot papers from the Returning Officers to the Service Voters and then the postal delays leads to the said postal ballots reaching back the Returning Officer after the declaration of the result which defeats the very purpose for which it was created rendering the whole process a farce and futile exercise. Stipulating a tenure of posting of minimum three years in the post at a peace station as the sufficient span of time for a defence officer and his family to get enrolled as a voter at the place of posting as a general voter has also been challenged by asserting that it is contrary to the provisions contained in Sections 19 and 20 of the Representation of the People Act, 1950 (hereinafter referred to as '1950 Act'). Accordingly, prayer has been made for initiation of process of preparation of electoral rolls for all defence areas and cantonments, so that the valuable right to vote is not defeated of the defence personnel and their family members

because of inaction on the part of the Election Commission as provided in Sections 15, 21 and 22 of the 1950 Act for discharging their duties. Counsel for the petitioner has put-forth his submissions on the basis of these pleadings.

*doesn't exist* → A detailed reply to the writ petition has been filed wherein Sections 19, 20 and 60 have been reproduced and explanations given thereto. Rule 7 of the Registration of Electors Rules, 1960 (hereinafter mentioned as '1960 Rules') has also been referred to and each plea, as has been raised in the writ petition, has been responded to.

*1951 Act* →

As per Section 19, which provides for condition for registration of a person as a voter, one of the conditions is that he should be an ordinarily resident of the constituency entitling him to be registered in the electoral roll for that constituency. Section 20 gives the meaning of the ordinarily resident and as per Sub-section (3), any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification and he would have been ordinarily resident on that date. Sub-section (4) provides that any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of sub-section apply, shall be deemed to be an ordinarily resident. As per sub-section (6), wife of any person referred to in sub-sections (3) and (4) if she is residing with such a person, shall be deemed to be ordinarily resident of the constituency. In case of any dispute, Rules made in this behalf with regard to ordinarily resident at the relevant time, will be determined with reference to the facts of the case. Section 20 thus, creates a legal fiction in favour of certain persons who may be deemed to be ordinarily residents in some other place than the place where they actually/physically reside for the time being which is a contingency due

to ~~compulsion of office/post held by them~~. Referring to Section 20(8) of the 1950 Act, it has been stated that service personnel have an option to get themselves registered as Service Voters in their native places.

Rule 7 of the 1960 Rules provides that a person, when submits declaration statement in the specified form to be registered in the constituency possessing a service qualification, he can get himself registered as a voter in the constituency where he would have been ordinarily resident, except for the requirement of service/post he holds. However, if a service voter desires his name to be included in the electoral roll of the constituency in which he is physically ordinarily resident for the time being like the Military Cantonments, because of his posting under the service in which he is employed, option is given to him to get himself registered as a general voter in that constituency by filling up Form-6 as laid in the Rules 1960 alongwith a declaration that he is not registered as a service voter in the constituency of his native place of residence. However, a condition has been imposed that the service voter is posted at a peace station and staying with the family on a tenure post of at least three years. This is for the reason that the demographical character of the constituency where there may be very small electorate is not altered which may affect the local populace and upset the electoral profile.

Recd.  
SC  
Nob. 12  
dt-  
12.9.09

Form-6  
W.R. 13(1) & 26

7th Part III B  
1961 Rules  
R. 294 f

- s 60 - enabling provision  
- Rule makes no provision

The person having service qualification is eligible for casting his vote by postal ballot as provided in Section 60 of the 1950 Act which provides for special procedure. As per Sub-section (a), any person who possesses service qualification as referred in clauses (a) or (b) of Sub-section (8) of Section 20 of the 1950 Act can cast his vote either in person or by postal ballot or by proxy. This would cover the members of the Armed Forces of the

1951 Act

Union and members of the Forces, to which the provisions of Army Act, 1950, have been made applicable with or without modification. Thus, a member of the armed forces of the Union or a member of the Forces has not been deprived of his right to vote. An option has thus, been given to a service voter to exercise his right either as a service voter in his native place or to register himself in his place of posting as a general voter if he fulfils the conditions specified for the said purpose. The right of casting vote of a personnel belonging to the armed forces has been amply preserved and safeguarded under the law.

merely an  
option, not a  
mandate

The allegations that the answering respondents have refused to initiate the process of making electoral rolls in the defence and cantonment areas have been denied. Rather, it has been asserted that the letter dated 28.12.2008 issued by the Election Commission of India had directed the Chief Electoral Officers to take special awareness campaign among the voters with a view to enhancing enrollment of the service voters while outlining the options available to them. Total number of service electors in the country during the General Elections of Lok Sabha 2009 was 1083809. This number does not include those service personnel who chose to enroll as general electors. In the States of Punjab and Haryana, a total number of 13347 and 287 defence personnel respectively were enrolled as general electors. Every effort has thus, been made by the Commission through awareness campaigns to apprise the defence personnel about their right.

Learned senior counsel for Election Commission of India and counsels for State Election Commissioners, Haryana and Punjab, have made their submissions on the basis of the above referred to pleadings.

We have considered the submissions made by the counsels for the parties and with their assistance have gone through the records of the case.

? Right to vote is not a fundamental right, but is a recognized statutory right and, therefore, the same is governed by the statute. It is a personal right and has to be exercised by the person as per his choice and the same cannot be enforced except by the individual and that too as provided under the statute. Thus, this PIL itself cannot be entertained.

what happens to Art. 32G

error in interpretation of law & precedents

However, the issue raised in this Public Interest Litigation preferred by the petitioner with regard to denying the right to vote to the members of the armed forces stands belied from the reply which has been filed by the respondents. As is apparent from the provisions as contained in Sections 19, 20 and 60 of the 1950 Act that the right of the armed forces personnel with regard to their registration as a voter and his right to vote has been amply protected and options have been provided for exercise of the same either in person or by postal ballot or even by proxy in his native place where he has been registered in the electoral roll as a service voter. Thus, there is no denial of any voting right to the armed forces personnel as was sought to be asserted by the petitioner. It may be noted here again that the right to vote is

has to be in acc. with the constitution neither a fundamental right nor an absolute right, but is a statutory right and ample opportunities have been granted to exercise the said right in accordance with statute. Armed forces personnel have, therefore, not been denied or deprived of their right to vote.

The projection on the part of the petitioner that the armed forces personnel are not made aware of their right to exercise their voting rights also cannot be accepted in the light of the fact that various campaigns have been held by the Election Commission and communications addressed to the Chief

CWP No. 3775 of 2009

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Electoral Officers directing them to carry out special awareness campaigns amongst the service voters with a purpose to educate them and enhance their knowledge while highlighting the options available to them such as appointing a proxy to vote for them, postal ballot, in person and/or to enroll as general electors in case they are posted at peace station and staying with family on a tenure posting of at least three years. The choice is, therefore, open for armed forces personnel to either exercise his right to vote in his native place <sup>? how.</sup> or to enroll himself as a general elector in the constituency in which he resides on a tenure posting of at least three years obviously at the cost of giving up his right to vote in his native place. Thus, the option has to be volunteered by the armed forces personnel. Further, the assertion of the petitioner about the denial of the right to vote or lack of information about the said right and the manner in which it can be exercised is belied from the fact that in the General Elections of Lok Sabha 2009, total number of service voters in the country were 1083809 excluding those service personnel who chose to enroll as general electors. In the State of Punjab, defence personnel who enrolled as general electors were 13347, whereas in Haryana, their number was 287. It can thus, not be said that the armed forces personnel are unaware of their right to vote and the mode through which they can exercise the said right.

→ A1. 14 ground  
on Mo 15/95

Wopansao v. N. L. Dayao Challenge has been posed to the condition enforced by the Election Commission which mandates armed forces personnel to be enrolled as an ordinarily resident in the constituency where he is posted prescribing a minimum three years posting tenure being arbitrary and without any basis.

But, this contention of the petitioner also cannot be accepted keeping in view the change of demographical character of the constituencies which have very

small electorates alteration of which may affect the local populace and upset the electoral profile. There are many parts of the country where due to security reasons and keeping in view the national interest including maintenance of security especially the border areas where large number of defence personnel (including para-military personnel) are posted, it would not

*Whether this is a valid ground*

be advisable nor would it be in the interest of the local populace that such a condition be not imposed. Apart from that, if such a condition is not put into place, to garner votes of the service personnel, they would be approached by the politicians, political parties as also the contesting candidates thus, exposing and involving them in active politics, which has its potential dangers and is required to be avoided in national interest. The neutrality of the armed forces need to be maintained and it is essential so that the interest of the country is not adversely affected in any manner.

*d. Here notice from EC does not take care of the problem*

As regards the ineffectiveness of the postal ballot because of the procedural and postal delay, the same has been taken care of by the respondents and detailed guidelines dated 21.10.2008 (Anenxure-R-3/1) have been issued by the Election Commission of India for smooth management of postal ballot in which the procedure has been streamlined, according to which, the District Electoral Officer as soon as the list of contesting candidates is drawn up after the period for withdrawal of candidates is over, will get the postal ballot papers printed at his level under direct supervision of responsible officer and the same will be despatched without any delay. The District Electoral Officer will coordinate with the senior officials of the postal department and shall ensure that a team of postal department officials receive covers containing the postal ballot papers and they in turn will ensure that the ballots are sent to the right address without any delay. The entire process will



CWP No. 3775 of 2009

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be videographed. Similarly, when the Returning Officers start receiving the polled postal ballot papers from the service voters, they shall give a daily report to the Observer concerned. The Returning Officers in turn is required to follow the procedures as also the polling officials as prescribed in the guidelines. All efforts have been made by the Election Commission to ensure that the service voters receive the postal ballot papers on time and the same are received back well in time, so that the valuable statutory right of the voter is not frustrated. All due care and caution has thus, been taken by the Election Commission, which would effectively translate the statutory right of vote by postal ballot papers into an effective mode of exercising the said right.

In view of the above, we do not find any merit in the present writ petition and thus, dismiss the same. Parties are left alone to bear their own costs.

(SANJAY KISHAN KAUL)  
CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)  
JUDGE

22.8.2013  
sjks

*True Copy*

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**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

(ORDER XVI RULE 1(A))

(Under Article 136 of the Constitution of India)

**SPECIAL LEAVE PETITION (C) NO. \_\_\_\_\_ OF 2014**

**WITH PRAYER FOR INTERIM RELIEF**

**BETWEEN**

<u>BEFORE THE</u> <u>HIGH COURT</u>	<u>BEFORE THIS</u> <u>HON'BLE</u> <u>COURT</u>
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1. Rajeev  
Chandrasekhar  
S/o Air Cdre. M.K.  
Chandrasekhar  
(Retd.)  
Residing at: 211,  
North Avenue, New  
Delhi - 110011.

NOT A PARTY

PETITIONER

**VERSUS**

1. Union of India,  
Through the  
Secretary, Ministry  
of Defense, South  
Block, New Delhi -  
110011

RESPONDENT  
NO.1

CONTESTING  
RESPONDENT  
NO.1

2. Ministry of Home  
Affairs, Government  
of India,  
Through the  
Secretary  
North Block, New  
Delhi - 110001.

RESPONDENT  
NO.2

CONTESTING  
RESPONDENT  
NO.2

3. Election Commission  
of India, Through the  
Secretary Nirvachan  
Sadan, Ashoka  
Road, New Delhi -  
110001

RESPONDENT  
NO.3

CONTESTING  
RESPONDENT  
NO.3

11

4.	State Election Commissioner, Punjab, Punjab Civil Secretariat, Sector 1, Chandigarh.	RESPONDENT NO.4	CONTESTING RESPONDENT NO.4
5.	State Election Commissioner, Haryana, Haryana Civil Secretariat, Sector 1, Chandigarh	RESPONDENT NO.5	CONTESTING RESPONDENT NO.5
6.	Chief Electoral Officer, Union Territory, Chandigarh, Mini Secretariat, Sector - 9, Chandigarh	RESPONDENT NO.6	CONTESTING RESPONDENT NO.6
7.	Chief Electoral Officer Punjab SCO 29-30 Sector 17-E Chandigarh -17	RESPONDENT NO. 7	CONTESTING RESPONDENT NO. 7
8.	Chief Electoral Officer Haryana Sector 15-2, Sector 15 Gorgon, Haryana	RESPONDENT NO. 8	CONTESTING RESPONDENT NO. 8
9.	Brig. Hardeep Singh Ghuman S/o. Late Capt. Hazura Singh Ghuman, residing at House No.1043, Sector 71, Mohali (Punjab)	PETITIONER	PROFORMA RESPONDENT NO.9

**PETITION UNDER ARTICLE 136 OF THE  
CONSTITUTION OF INDIA AGAINST THE IMPUGNED**

12

**FINAL JUDGMENT AND ORDER DATED 22.08.2013  
PASSED BY THE HON'BLE HIGH COURT OF  
PUNJAB AND HARYANA AT CHANDIGARH IN CWP  
NO. 3775 OF 2009**

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TO

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
SUPREME COURT OF INDIA, NEW DELHI

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. The present Special Leave Petition is directed against the impugned final judgment and order dated 22.08.2013 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh, (hereinafter referred to as the "Impugned Order") in CWP No. 3775 of 2009, whereby the Hon'ble Division Bench of the High Court of Punjab & Haryana at Chandigarh has dismissed a Public Interest

to participate in the election process of the country. The Hon'ble High Court while dismissing the PIL filed by the said officer held that all due care has at all times been taken by the Election Commission (i.e. the Respondent No. 3 herein) to ensure that the statutory right of the voter is not frustrated.

**2. QUESTIONS OF LAW**

The Petitioner submits that the following questions of law arise for consideration by this Hon'ble Court:-

- 2.1. Whether the Hon'ble High Court was justified in coming to the conclusion that the right to vote of the Armed Forces Personnel has been amply protected by merely the statutory provisions, without the Respondents discharging their duties under Sections 15, 21 and 22 of the Representation of the People Act, 1950?
- 2.2. Whether the Hon'ble High Court is justified in dismissing the Writ Petition without passing appropriate directions to the Respondents in light of the Special Army Order bearing No. SAO-16/S/72 which was subsequently amended vide Army Order bearing No. A.O. 15/95?

- 2.3. Whether the Hon'ble High Court failed to appreciate that the Army Order No. A.O. 15/95 effectively amends the Special Army Order having No. SAO-16/S/72, thereby granting the right to Armed Forces Personnel to be enrolled as an ordinary voter at their place of posting?
- 2.4. Whether the Hon'ble High Court erred in law in concluding that the 'right to vote' is merely a statutory right and not a constitutional right?
- 2.5. Whether the Hon'ble High Court erred in concluding that the 'right to vote' being a statutory right cannot be enforced in a public interest litigation and can solely be enforced by an individual only in accordance with statutory law?
- 2.6. Whether the Hon'ble High Court is justified in concluding that the provisions of the Representation of the People Act, 1950 (hereinafter referred to as the "1950 Act"), and the Representation of the People Act, 1951 (hereinafter referred to as the "1951 Act") read with the Registration of Electors Rules, 1960 (hereinafter referred to as the "1960 Rules"), amply protect the

right of the Armed Forces Personnel to be registered as voters and thus no directions ought to be issued to the Respondents?

2.7. Whether the Hon'ble High Court was correct in upholding the additional conditions imposed by the Election Commission (Respondent No. 3 herein) vide communication dated 28.12.2008 (being Annexure P-5) which are neither provided under the statute nor the Rules made thereunder?

2.8. Whether the Hon'ble High Court failed to appreciate that the communication of the Election Commission to all Chief Electoral Officers of the States and Union Territories dated 28.12.2008 stipulating the condition of minimum tenure posting of three years at a peace station for being eligible to be registered as an ordinary voter at such place of posting is in complete derogation of constitutional and statutory rights of an individual to be registered as a voter at his place of ordinary residence?

2.9. Whether the Hon'ble High Court is justified in passing the Impugned Order in complete ignorance of the law laid down by this Hon'ble Court in A.C. Jose v. Sivan Pillai & Ors., (1984) 2 SCC 656,

explicitly holding that it is not open to the Election Commission to override the Act or Rules or pass orders in direct disobedience to the mandate provided under the Act or the Rules made thereunder?

- 2.10. Whether the Hon'ble High Court is justified in passing the Impugned Order in complete ignorance of the communication dated 20.03.1995 bearing No.24/95-P.S. issued by the Election Commission of India to the Government of India?
- 2.11. Whether the Hon'ble High Court erred in law in passing the Impugned Order in complete disregard of the decision of this Hon'ble Court in Wopansao v. N.L. Odyuo & Ors., (1971) 2 SCC 550, which categorically recognised the right of a citizen with 'service qualification' to be enrolled as a voter in the constituency in which he is residing though such place happens to be his place of service?
- 2.12. Whether the Hon'ble High Court is justified in coming to the conclusion that the 'right to vote' compromises the neutrality of the Armed Forces?



- 2.13. Whether the Impugned Order is violative of Article 14 and Article 326 of the Constitution of India?

3. **DECLARATION UNDER RULE 4(2)**

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the Impugned Order dated 22.08.2013 passed by the Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No. 3775 of 2009.

4. **DECLARATION UNDER RULE 6**

The Annexures P-1 to P-6 produced along with the SLP are true copies of the pleadings/documents which formed part of the records of the case in the Court below against whose order the leave to appeal is sought for in this petition. Annexure P-7 was not part of the court records below and an application to the said effect is being filed along with the present petition.

5. The Petitioner seeks leave to appeal on *inter alia* the following grounds which are without prejudice to one another:-

**GROUND**

- 5.1. **BECAUSE** the Hon'ble High Court erred in law in holding that 'right to vote' is merely a statutory right and not a right emanating from the Constitution of India. The Impugned Order is thus liable to be set aside.
- 5.2. **BECAUSE** the Hon'ble High Court completely ignored the constitutional provision embodied in Article 326 of the Constitution of India which provides that for elections to the House of the People and the Legislative Assembly of every State, every citizen is guaranteed the entitlement to be registered as a voter at any such election subject to any disqualification provided under any Parliamentary legislation. It is most respectfully submitted that Section 16 of the 1950 Act disqualifies a person from being registered on an electoral roll only on three grounds, viz., (i) if he is not a citizen of India, (ii) if he is of unsound mind and stands so declared by a competent court, or, (iii) if he is disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. It is

further submitted that Section 19 of the 1950 Act entitles a person so not disqualified to be registered in the electoral rolls of a constituency where he is ordinarily resident. It is humbly submitted that no further conditionality has been imposed on the registration of an individual on the electoral rolls, even for those who are under a 'service qualification', either under any of the statutory provisions or the Constitution of India.

5.3. **BECAUSE** the Hon'ble High Court, erred in law in passing the Impugned Order in utter disregard of the decision of this Hon'ble Court in Wopansao v. N.L. Odyuo & Ors., (1971) 2 SCC 550, which categorically recognised the right of a citizen with 'service qualification' to be enrolled as a voter in the constituency in which they are residing though such place happens to be their place of service. This Hon'ble Court had observed therein,

"... The contention on behalf of the appellant was that a member having service qualification can only be ordinarily resident at the constituency in which but for his having service qualification he would have been ordinarily resident on that date, and,

therefore, since Wokha was the place for service, Wokha could not be the place for ordinary residence and his home town or village would be the only place where he would be ordinarily resident. Such a construction would be misreading Section 20(3) of the 1950 Act, having service qualification would be deemed to be ordinarily resident at their home town or place but for their service qualification. When the personnel made statements to the effect that they ordinarily resided at Wokha, they did not want to take advantage of the fiction of being ordinarily resident at their home town or village but they stated that they are ordinarily resident at Wokha. The Electoral Registration Officer was within his jurisdiction to register the personnel of the 12<sup>th</sup> Battalion as ordinary residents at Wokha by reason of their statements in the prescribed forms. The statutory fiction is intended to confer the right to be registered as electors at their home town or village but the fiction cannot take away the right of persons possessing service qualification to get themselves registered at a constituency in which they are ordinarily residing, though such place happens to be their place of service."

5.4. **BECAUSE** the Hon'ble High Court erred in interpreting Rule 7 of the 1960 Rules which merely gives an option to a person holding a declared office to be registered in the constituency where he would have been ordinarily resident, but for a service qualification, while in no way limiting the option available to such a person to be registered as a voter at the place of posting, without any further added conditionality. It would not be out of place to mention herein that not only did the Hon'ble High Court failed to interpret the said Rule but also passed the Impugned Order in utter disregard of the judgment of this Hon'ble Court in *Wopansao v. N.L. Odyuo & Ors.*, (1971) 2 SCC 550.

5.5. **BECAUSE** the Hon'ble High Court erred in relying upon Form-6 for the purpose of inclusion of names of service voters on the electoral roll of the constituency where one is rendering service is in complete misunderstanding of the scheme of the 1950 Act and the 1960 Rules thereunder. It is most respectfully submitted that Form-6 of the 1960 Rules relates only to Rules 13(1) and 26 of the aforementioned Rules. Rule 13(1) relates to general

claims after the publication of the draft rolls without being in any way associated with the special conditions associated with service voters holding a declared office. Furthermore, Rule 26 pertains to correction of entries and inclusion of names in electoral rolls pursuant to final publication of rolls under Rule 22 of the 1960 Rules.

5.6. **BECAUSE** the Hon'ble High Court, contrary to judicial precedents including the majority opinion rendered by this Hon'ble Court in *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399, erroneously held that the 'right to vote' is merely a statutory right and on that ground held that the PIL cannot be entertained. This Hon'ble Court in the said matter has held that "The right to vote at the elections to the House of People or Legislative Assembly is a constitutional right but not merely a statutory right."

5.7. **BECAUSE** the Hon'ble High Court failed to take notice of a catena of decisions of this Hon'ble Court clearly settling the position of law that the jurisdiction of the superior Courts can be invoked in

a public interest litigation for the protection of not only fundamental rights but for the enforcement of statutory and constitutional rights as well. This Hon'ble Court had held in the case of Indian Banks' Association, Bombay & Ors. v. Devkala Consultancy Service & Ors., (2004) 11 SCC 1, that,

"... While entertaining a public interest litigation, this Court in exercise of its jurisdiction under Article 32 of the Constitution of India and the High Courts under Article 226 thereof are entitled to entertain a petition moved by a person having knowledge in the subject matter of the lis and, thus, having an interest therein as contradistinguished from a busy body, in the welfare of the people. The rule of locus has been relaxed by the Courts for such purposes with a view to enable a citizen of India to approach the Courts to vindicate legal injury or legal wrong caused to a section of people by way of violation of any statutory or constitutional right."

5.8. **BECAUSE** the Hon'ble High Court failed to appreciate that Part XV of the Constitution of India dealing with "Elections", is a complete Code by

itself, and it creates rights and provides for their enforcement, as had been held by this Hon'ble Court in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors., AIR 1952 SC 64. It is most respectfully submitted that any statute which is enacted by the Parliament or any Rule or law made by an appropriate authority under the provisions of this Chapter, would have to comply with the requirements contained therein. It is further submitted that the two Acts i.e. the Representation of the People Acts of 1950 and 1951 are enacted under the authority of Article 327 of the Constitution which starts as "Subject to the provisions of this constitution", and thus no statute, rule or law can be made in derogation of the provisions of the Constitution of India, especially in the context of Article 326, which entitles every citizen to be registered as a voter.

- 5.9. **BECAUSE** the Hon'ble High Court failed to appreciate that the communication of the Election Commission to all Chief Electoral Officers of the States and Union Territories dated 28.12.2008 stipulating the condition of minimum tenure posting of three years at a peace station for being



eligible to be registered as an ordinary voter at such place of posting is in complete derogation of constitutional and statutory rights of an individual. It is most respectfully submitted that the said communication clearly provides that 'however, if a Service personnel serving at a peace station intends to register as a general voter, he can be registered as a general voter (as against Service voter) only if he is residing there with family for a sufficient span of time or provided he is on a tenure posting of 3 years or more in that peace station'. It is most respectfully submitted that such a condition which has been sought to be imposed is in utter disregard to any of the provisions of the Acts or the Rules made thereunder. Thus, the said conditions are illegal and cannot be given effect to. It would not be out of place to mention herein that such a condition which has been imposed only upon Service Personnel is arbitrary since no such rule is applicable to any other class of migrant citizenry of this country.

- 5.10. **BECAUSE** the Hon'ble High Court passed the Impugned Order in complete ignorance of the law laid down by this Hon'ble Court in the case of A.C.

Jose v. Sivan Pillai & Ors., (1984) 2 SCC 656, wherein this Honble Court has held,

“(b) where there is an Act and express Rules made thereunder it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324.”

It is most respectfully submitted that the Election Commission's Communication dated 28.12.2008, stipulating the minimum requirement of a tenure posting of three years for being registered as a general voter is unsustainable in law and violative of the right to vote of the Armed Forces Service personnel.

5.11. **BECAUSE** the Hon'ble High Court erred in dismissing the Public Interest Litigation without passing directions to the Respondents for the enforcement of a valid prior Notification of the Election Commission dated 20.03.1995, No. 24/95-

P.S.II, issued to the Government of India with regard to the registration of persons having service qualifications. The said Notification clearly provides as under: ,

"4.2. Those persons having service qualification other than those who are employed under the Govt. of India in a post outside India and who are posted in a place which is their actual place of ordinary residence and who do not wish to avail themselves of the fictional domicile under Section 20(8) of the Act can get themselves registered as electors in their actual place of residence as general electors."

5.12. **BECAUSE** the Hon'ble High Court failed to take note of the communication from the Election Commission of India to the query of Proforma Respondent No.7, dated 01.09.2006, admitting that "the existing law does not prescribe any period or minimum period in relation to the requirement of being 'ordinary resident' in a constituency...". Furthermore, the Impugned Order has been passed in complete denial of the admission of the Election Commission in its communication dated 01.09.2006 that despite the existing law that

service voters have been "generally left out" in cantonment areas. A relevant extract from the communication is being reproduced here, for the ease of reference:

"Item No.2: Has any house-to-house enumeration ever been done in armed Forces and Para-military Forces Areas and if not why not?

Necessary instructions were issued vide Commission's letter No. 24/95-PS-II dated 20<sup>th</sup> March 1995, to authorities concerned with registration of service personnel and endorsed to the Chief Electoral Officers of all States / U.T.s. However, the legal position does not seem to have been adequately stressed upon the Electoral Registration Officer etc. concerned with registration of persons in the electoral roll. Therefore, during intensive revisions, house-to-house enumeration of persons living in cantonment areas and fulfilling the criterion laid down in reply to Question (A) above, and desiring to be enrolled as general electors in the place of posting, instead of availing the facility of fictional domicile to get enrolled in the last part of the roll at the native place, has been generally left out. The Commission has therefore again issued

instructions reiterating the correct legal position about conducting house to house enumeration of eligible persons residing in cantonment area vide its letter No. 23/2006-PS-II, dated 14.07.2006 and has requested to bring to notice of all Electoral Registration Officers concerned for proper understanding and compliance in future."

- 5.13. **BECAUSE** the Hon'ble High Court failed to appreciate that the condition which is being imposed, i.e., that a service voter posted at a peace station can only be registered as a voter in such constituency if such a tenure post is of at least three years' duration is violative of Article 14 of the Constitution of India. This Hon'ble Court had held in a plethora of cases, including those in *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75, *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191, *Confederation of Ex-Servicemen Associations & Ors. v. Union of India & Ors.*, (2006) 8 SCC 399, that every classification to be legal, valid and permissible, must fulfil a twin-test, namely,
- i) the classification must be founded on an intelligible differentia which must distinguish

persons or things that are grouped together from others leaving out or left out; and

- ii) such a differentia must have a rational nexus to the object sought to be achieved by the statute or legislation in question.

The Hon'ble High Court failed to appreciate that imposition of an arbitrary requirement of being posted for three years for being registered as a voter at the constituency where he is rendering such service has no rational nexus with any object that the Constitution or the purpose sought to be achieved by the statute. It is most respectfully submitted that while a civilian would not be under any such embargo for being registered as a voter, a person holding a declared office suffers an arbitrary impediment which is clearly violative of Article 14 of the Constitution.

5.14. **BECAUSE** the Hon'ble High Court failed to appreciate that the requirement of being posted for at least three years at a peace station for being registered as a voter in such constituency, is in violation of the constitutional guarantee embodied in Articles 19(1)(d) and (e) of the Constitution of

India. The Hon'ble High Court has ignored the constitutional protections which are guaranteed to a citizen 'throughout the territory of India' through the 'freedom of movement' and 'freedom of residence' as embodied in Articles 19(1) (d) and (e) of the Constitution. The Hon'ble High Court has further failed to appreciate the salutary nature of such protections as embodied in these clauses of the Constitution, *viz.*, to remove internal barriers within India or between any of its parts and is in the teeth of the very unitary nature of the Indian polity.

- 5.15. **BECAUSE** the Hon'ble High Court failed to appreciate that even under the Army Orders currently subsisting on this issue *viz.*, A.O. 15/95 clearly specifies that the provisions of the election laws do not deprive any person having 'Service Qualification' of the right to get enrolled as a general elector in the electoral roll of his place of posting if that place happens to be his actually place of ordinary residence. It is humbly submitted that A.O. 15/95, which amends the pre-existing Special Army Order No. SAO-16/S/72 removes the

restrictions brought about by the previous Order regarding the voting rights of Service voters.

5.16. **BECAUSE** the Impugned Order of the Hon'ble High Court is contrary to the letter and spirit of the provisions of the Constitution of India, as well as those contained in the Representation of the People Act, 1950 and 1951 and the Rules made thereunder.

5.17. **BECAUSE** the Impugned Order of the Hon'ble High Court has the effect of perpetuating the illegality and continuing the deprivation of the constitutional rights of the armed forces personnel who are considered as having a service qualification.

5.18. Any other ground as may be available to the Petitioner for which the Petitioner craves leave to add, amend or delete the grounds at any time on or before the hearing of the matter.

6. **GROUND FOR INTERIM RELIEF**

6.1. It is most respectfully submitted that the General Elections are forthcoming in the month of April-May 2014. The Impugned Order passed by the Hon'ble



High Court of Punjab and Haryana has the effect of continuing the right to vote of the armed forces personnel being frustrated since they would not be able to get themselves registered as voters in the constituencies where they are ordinarily resident due to their service tenures.

6.2. It is further submitted that the present petition and the questions raised therein concerns not only the armed forces personnel but also their families who are posted outside their hometown and are presently unable to cast their votes, thereby being deprived of their right to participate in the election process of the country.

6.3. That unless this Hon'ble Court intervenes at this stage, by passing appropriate directions the armed forces personnel would suffer irreparable loss, injury and serious prejudice by being deprived of a chance to exercise their right to vote in the forthcoming General Elections. It would therefore be in the interest of justice and equity that pending the hearing and final disposal of the instant petition, the Impugned Order be stayed and directions be passed against the Respondents such that service

voters are enrolled as ordinary voters if they so desire, in the respective constituencies where they are posted for service.

7. **MAIN PRAYER**

In view of the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) Grant Special Leave to Appeal to the Petitioner against the impugned final judgment and order dated 22.8.2013 passed by the Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No. 3775 of 2009;
- b) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case, in the interest of justice and equity.

8. **PRAYER FOR INTERIM RELIEF**

It is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Pass an ad-interim order of stay, staying the Impugned final judgment and order dated 22.08.2013 passed by the Division Bench of the

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High Court of Punjab and Haryana at  
Chandigarh in CWP No. 3775 of 2009;

- (b) Pass such other order or orders as this Hon'ble  
Court may deem fit in the facts and  
circumstances of the case, in the interest of  
justice and equity.

DRAWN BY

FILED BY

Mr. Sajan Poovayya, Adv.

Mr. Akhil Anand, Adv.

Mr. Priyadarshi Banerjee, Adv. (E.C. AGRAWALA)

**ADVOCATE FOR THE PETITIONER**

DRAWN ON: 10.2.2014

FILED ON: 11.2.2014

NEW DELHI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2014

IN THE MATTER OF

RAJEEV CHANDRASEKHAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CERTIFICATE

Certified that the Special Leave petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the special Leave petition except an application for permission to file additional documents on record. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner whose affidavit is filed in support of the SLP.

NEW DELHI

DRAWN ON: 10.2.2014  
PETITIONER

(E.C. AGRAWALA)  
ADVOCATE FOR THE

FILED ON: 11.2.2014

37  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.

OF 2014

IN THE MATTER OF:

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

AFFIDAVIT

I, Rajeev Chandrasekhar, son of Air Cdre. M.K. Chandrasekhar (Retd.), aged about 46 years, resident of 211, North Avenue, New Delhi 110011, do hereby solemnly affirm and state as under: He

1. That I am the Petitioner in the abovementioned Petition and as such, I am well conversant with the facts and circumstances of the present case and I am fully competent to depose by way of the present Affidavit.
2. That I have read and understood the contents of synopsis and list of dates consisting of 11 pages. ( B to L ) and the accompanying Special Leave Petition consisting of 29 pages ( 10 to 38 ). The same have been drafted as per my instructions and are true and correct to my knowledge and belief.

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3. I say, that the averment of facts stated hereinabove are true to my knowledge and no part of it is false and nothing material has been concealed therefrom.
4. That the annexures are true copies of their respective originals.

*Aswathan*  
**DEPONENT**

VERIFICATION:

I, the abovenamed Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Delhi, on this the 10th day of February, 2014.

*Aswathan*  
**DEPONENT**

SPECIAL ARMY ORDER  
ADJUTANT GENERAL'S BRANCH

SAO 16/S/72 Elections – Army personnel

*Eligibility for Registration as a Voter*

1. A person subject to Army Act is eligible for registration as a voter, provided he is -
  - (a) a citizen of INDIA
  - (b) of 21 years of age on Jan 1 of the year in which the electoral roll is prepared or revised, and
  - (c) ordinarily resident in the constituency in which, but for his service in the Army, he would have been ordinarily resident. In the case of a person whose ordinary place of residence is in J&K State, he should also be permanent resident of the State, for the purpose of registration in the electoral rolls for any assembly constituency in the State. .
2. A Service voter is deemed in the absence of evidence to the contrary to be ordinarily resident in the constituency declared by him in the statement and verified in the prescribed manner only for registration for the purpose of elections to the State Legislative Assemblies and the House of the People. For purposes of elections in 'Graduates' and Teachers' constituency concerned because for voting at these elections he has to be actually resident in the constituency on the qualifying date i.e. on Nov. 1 of the year in which registration is sought.

*Procedure for Registration*

3. The name of a person will be registered in the electoral roll the basis of a statement in Form 2 (Appendix A to this Army Order) sent by him (in duplicate) to the Chief Electoral Officer of the State concerned through his Record Office. The form should be sent by a service voter as soon as he becomes eligible to be enrolled as a Service Voter or as otherwise directed by the Election Commission in his behalf.

4. In case of non-medical officers, statements will be forwarded to Army HQ, AG's Branch (Org. 3) and in respect of Medical Officers Med. Dte (MPRSO). Statements in respect of TA officers serving as permanent staff will be forwarded to Territorial Army service in respect of JCOs and OR of the Territorial Army serving as the permanent staff of TA units will be verified by the respective Head Offices.

5. It will be ensured that the statements are filled correctly. Essential details viz regimental number, rank, name (in full), home address will be clearly specified. In case of rural areas, full details of Village, Post Office, Tehsil / taluk, District, Zail / Patti, Police Station / Thana will be indicated. In case of urban or sub-urban areas, details of House No. / Street, Police Station / Tehsil / Taluk, District will be shown. Actual residence is of course not necessary so long as adequate details of the probable place of residence but for his service in the Army are given so as to enable the election authorities to determine the constituency to which the elector would belong.

6. In the absence of a printed form, typed or cyclostyled form can be used, provided it conforms to the printed form in every respect Requirements of the form will be met locally.



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7. The wife of a person, if she is a citizen of INDIA and is not less than 21 years of age would, and if she be ordinarily residing with him, be eligible to be registered as a voter in the constituency specified by her husband in the statement furnished by him.

8. As regards persons whose ordinary place of permanent residence is within J&K State, a statement in 'Form 2 of the J&K Registration of Electoral Rules, 1966 (Appendix 'B' to the Army Order) should also be submitted.

9. Record offices will check the correctness of entries in the Statements and sort them out State-wise. Both the copies of the statements will then be dispatched immediately to the Chief Electoral Officer of the State concerned (specified in Appendix 'C' to this SAO). The officer certifying correctness of the statements will be held personally responsible for the correctness of the entries.

10. The statement submitted by a Service voter will cease to be valid when he ceases to be subject to the Army Act or transferred to 'reserve'. It will not be necessary for a person who has already submitted a statement to resubmit it in subsequent years unless any change is desired to be made in the particulars given originally, or a fresh statement is called for by the Election commission.

#### *Electoral Rolls*

11. On receipt of the statements in the Chief Electoral Officer's office, they will be sorted out constituency-

wise and forwarded to the electoral registration officer. For convenience of subsequent extraction, the names in this part will be arranged according to Record Offices and serial numbers given thereafter to each elector. As soon as the statements received from any one Record Office have been thus classified and the lists have been entered up, the counterfoil at the end of the elector's statements will be completed and one copy of each returned to the Record Office concerned. In the case of J&K until the rules are amended, the electoral registration officer will sign the counterfoils for and on behalf of the Chief Electoral Officer.

12. The statements received from the electoral registration officers will be arranged by the Record Office constituency-wise for each State so that future references from the electoral registration office / Chief Electoral Officer can be easily dealt with. The statements will be scrutinized and the following information furnished to the electoral registration officers by 15 Mar of a particular year:-

- (a) casualties of personnel who are borne on the electoral rolls, e.g. Death, resignation, retirement or discharge; and
- (b) inadvertent errors which might have crept in during the preparation of the rolls;
- (c) in cases where the records of the Armed Forces personnel are transferred from the Record Office to another, the duplicate copy of the statement will also be invariably sent to the Record Offices concerned under intimation to the concerned Electoral Registration Officer, and in cases where Service personnel desired to send revised or fresh statements, every facility should be provided to them.

13. On the basis of this information, the Electoral Registration Officers would prepare the lists of amendments at the time of revision, and the existing rolls together with these amendments would be the final roll until they are revised again.

14. In the year previous to the elections, in order to bring the roll up-to-date, the Electoral Registration Officers will, in addition prepare Record Office-wise, extracts from the roll and send them to the respective Record Offices in duplicate. One copy of the extract will be returned by the Record Office after scrutiny of the changes in number, rank, address and status. The Returning Officers will take these corrections into consideration while sending the postal ballot papers to Service Voters. The form in which the electoral rolls of Service Voters is prepared is shown at Appendix 'D' to this Army order. To facilitate the work of the Electoral Registration Officers, the information regarding additions, corrections, and deletions will be given strictly according to the headings mentioned therein.

15. The electoral rolls for Service voters are prepared in English.

#### *Voting by Post*

16. Service voters are authorized to vote only by postal ballot. They cannot vote in any other manner i.e. they cannot vote in person, even they happen to be on leave or otherwise at the place of poll on the day of election. However, military officers who are members of the Cantonment Boards and are consequently voters in the Local Authorities constituencies can vote in person if they happen to be at the place of poll on the day of election.

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17. The postal ballot paper is printed in English and contains the name of the constituency and the names of the contesting candidates (with the name of the political party, if any, in brackets below their names).

18. The Returning Officer of the constituency concerned would as soon as the names of the candidates contesting are finalized, send a postal ballot paper along with the following forms, by post under certificate of posting in a separate cover addressed to each electors care of the Record Office concerned for transmission to the individual voter:

- (a) a declaration in Form 13A
- (b) a cover in Form 13B
- (c) a large cover addressed to the Returning Officer in Form 13C.
- (d) instructions for the guidance of the electors in Form 13D.

Copies of these forms are shown in Appendix 'E' to this Army Order.

19. The Record Offices will arrange correct and expeditious redirection of ballot paper, he is to record his vote thereon in accordance with the directions given in part I of Form 13D. The ballot paper will then be secured in the cover in Form 13B. He will then sign a declaration in Form 13A in the presence of, and have the signature attested by his Commanding Officer or by such other officer as may be appointed by him. The ballot paper and the declaration will then be returned to the Returning Officer in accordance with instructions contained in part II of Form 13D so as to reach him before the time and date specified therein. No cover in Form 13C received after the time indicated therein would be opened or counted. The voters is not required to affix any postage stamps to the envelope while returning it to the Returning Officer.

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21. The Returning Officer will reject a ballot paper under the following circumstances:-

- (a) if the declaration in Form 13A is not found in the cover in Form 13C, or
- (b) if the declaration has not been duly signed or attested or is otherwise, substantially defective, or
- (c) if the serial number of the ballot paper entered in the declaration differs from such number endorsed in form 13B, or
- (d) if the ballot paper bears any mark (other than the mark to record the vote or wiring by which the elector can be identified, or
- (e) if no vote is recorded thereon, or
- (f) if votes are given on it in favour of more than one candidate, or
- (g) if the recording of vote creates a doubt as to which candidate the vote has been given, or
- (h) if it is damaged, mutilated, or its identity as a genuine ballot paper cannot be established, or
- (i) if it is not returned in the cover sent along with it to the elector by the Returning Officer.

22. The dispatch of ballot papers for Army personnel posted in foreign countries will be by Ordinary Mail except those posted in PAKISTAN to whom the postal ballot papers will be sent through the diplomatic bag. The cover will be returned by the Army personnel to the Returning Officer concerned direct by air mail service after the requisite postage is affixed thereon by the office in which the Army personnel is serving except where it is sent by diplomatic bag.

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23. This CANCELS SAO 8/S/65 as amended from time to time.

61559 /AG / PS Coord.

NS NAIR  
Lt. Gen  
Adjutant General

True Copy

Advocate

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ANNEXURE: P-2

SECRETARIAT OF  
ELECTION COMMISSION OF INDIA

Nirvachan Sadan  
Ashoka Road  
New Delhi-11001

No. 24/95-P.S.II /

Dated: 20<sup>th</sup> March, 1995

\*Shri P.S. Chhina,  
Dy. Secretary,  
(By name)

1. \*The Secretary to the  
Government of India  
Ministry of Defense,  
South Block, New Delhi

\*\* Shri S.K. Swami  
Dy. Secretary,  
(By Name)

2. \*\* The Secretary to the  
Government of India  
Ministry of Home Affairs,  
North Block, New Delhi

Shri Thakur Datt,  
Director,  
(Estt. & Vig.)  
(By name)

3. The Secretary  
B.R.D.B.,  
Ministry of Surface Transport  
'B' Wing, 4<sup>th</sup> Floor,  
Sena Bhavan, New Delhi.

Subject: Registration of persons having service qualifications -  
regarding.

Sir,

As you are aware, every Indian citizen who is not less than  
18 years of age on the qualifying date and is ordinarily resident in  
a constituency is entitled for registration in the electoral roll for  
that constituency subject to conditions laid down in the law.

2. Under the election law, the members of the Armed Forces of the Union; or of a force to which provisions of the Army Act, 1950 (46 of the 1950), have been made applicable, whether with or without modification, or members of an Armed Police Force of a State serving outside that State and persons employed under the Government of India in a post outside India are treated as persons having "service qualification" and these persons are deemed to be 'ordinarily resident' on any date in the constituency in which, but for having such service qualification, they would have been ordinarily resident on that date. The wives of service electors, if ordinarily residing with their husbands, are also deemed to be ordinarily resident in the constituency.

3. The provisions of the election laws do not, however, deprive any person having "service qualification" the right to get enrolled as a general elector in the electoral roll of his place of posting if that place happens to be his actual place of ordinary residence.

4. To ensure that all service electors are able to enroll themselves and also exercise their franchise, the correct procedure to be followed in the matter of registration of service electors is outlined hereunder for the information of all concerned:-

4.1 All persons having "service qualification" under section 20(8) of the Representation of the People Act, 1950 can avail themselves of the facility of fictional domicile under Section 20(8) of the Representation of the People Act, 1950 and get themselves registered as electors in their original (native) home town or village where they would have been ordinarily resident but for their service qualification;



4.2 Those persons having service qualification other than those who are employed under the Government of India in a post outside India and who are posted in a place which is their actual place of ordinary residence and who do not wish to avail themselves of the fictional domicile under Section 20(8) of the Act can get themselves registered as electors in their actual place of residence as general electors;

4.3 In the former category of cases i.e. those who elect the benefit of the fictional domicile should apply in Form-2 appended to the Registration of Electors Rules, 1960, and will be registered as 'service electors';

4.4 In the latter category of cases i.e. those who like to register themselves at their actual place of residence by virtue of being ordinarily resident there, can get themselves enrolled at the time of house-to-house enumeration or by filing an application in Form 6 appended to the Registration of Electors Rules, 1960 as ordinarily electors and not as service electors".

4.5 Only those service personnel who had remained in the State / place of posting for a sufficient span of time with their families and can genuinely claim to be ordinarily residents in the area are eligible to be enrolled as electors in the general part of electoral roll.

4.6 When once a service voter is enrolled as an ordinary elector in the general part of the electoral roll, he can vote only in person in a polling station set up for the purpose.

5. The above correct position about enrolment of service voters may kindly be brought to the notice of all concerned immediately.

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The Special Army Order etc. should be amended and revised orders issued to indicate the correct position.

6. A copy of all the instructions / orders issued by each service Headquarters should be forwarded to the Commission by 21<sup>st</sup> April 1995.

7. Kindly acknowledge the receipt.

Yours faithfully  
Sd/-  
(K.P.G. KUTTY)  
SECRETARY

No. 24/95-P.S.II/

Dated: 20<sup>th</sup> March, 1995

1. Copy to Chief Electoral Officers of all States / Union Territories. They are requested to bring the above instructions to the notice of all Electoral Registration Officers and all others concerned. The Electoral Registration Officers and all other concerned. The Electoral Registration Officers should, among other conditions of registration, satisfy themselves as to the conditions of ordinary residence of the electoral having service qualification desiring to be enrolled as a general elector at the place of service / posting. As the existing law does not prescribe any period or minimum period in relation to the requirements of being "ordinarily residence" in a constituency, he should apply his mind judiciously taking into accounts the facts in each case.

2. Acknowledge receipt and confirm action taken.

(K.P.G. KUTTY)  
SECRETARY

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ADVOCATE

51  
ANNEXURE: P-3

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

No. 4/RTI/62/2006/JS-II / 3559 Dated: 1<sup>st</sup> September, 2006

To

Brig. H.S. Ghuman  
Shaurya Chakra Retd.  
President of  
All India Veterans Core Group (NGO),  
1043, Sector 71, Mohali  
Near Chandigarh-160 071.

Subject: Right to Information Act, 2005 – regarding.

Sir,

With reference to your application no. AIVCG/ FVR / 06 / 32 dated 05 /07/2006 and subsequent letter No. AIVCG / FVR / 06/40 dated 02.08.2006 on the subject cited, I am to inform that the requisite information is as under:

Item No. 1: Is there any six months condition laid in such cases, if so what is rationale for the same?

The existing law does not prescribe any period or minimum period in relation to the requirement of being "ordinary resident" in a constituency, the Electoral Registration Officer has to apply his mind judiciously taking in to account the facts in each case.

In respect of person having service qualification (other than those who are employed under the Government of India in a post outside India) desiring to be enrolled as a general elector at the place of service / posting, only those service personnel who

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had remained in the State / place of posting for a sufficient span of time with their families and can genuinely claim to be ordinarily residents in the area are eligible to be enrolled as electors in the general part of electoral roll.

Item No. 2: Has any house-to-house enumeration ever been done in armed Forces and Para-military Forces Areas and if not why not?

Necessary instructions were issued vide commission's letter No. 24/95-PS-II dated 20<sup>th</sup> March 1995, to authorities concerned with registration of service personnel and endorsed to the Chief Electoral Officers of all States / U.Ts. However, the legal position does not seem to have been adequately stressed upon the Electoral Registration Officer etc. concerned with registration of persons in the electoral roll. Therefore, during intensive revisions, house-to-house enumeration of persons living in cantonment areas and fulfilling the criterion laid down in reply to Question (A) above, and desiring to be enrolled as general electors in the place of posting, instead of availing the facility of fictional domicile to get enrolled in the last part of the roll at the native place, has been generally left out. The Commission has, therefore, again issued instructions reiterating the correct legal position about conducting house-to-house enumeration of eligible persons residing in cantonment areas vide its letter No.23/2006-PS-II, dated 14<sup>th</sup> July, 2006 and has requested to bring it to the notice of all Electoral Registration Officers

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concerned for proper understanding and compliance  
in future.

Item No. 3: Action taken on the letter No. Supreme conde / 05/10 dated 29 March 2005 stated to be forwarded by the President's Secretariat to the Commission vide their letter No. PI/A-47144 dated 1 April 2005.

The above reference letter has not been received in the Commission from the President Secretariat. However, the Commission has received your letter dated 22/04/2005 and the letter from the Armed forces headquarters on the subject, and the Commission has issued instructions in this matter vide the Commission letter No. 23/2006/PLN-II dated 14/07/2006.

3. If you want to obtain the photocopies of the above-mentioned Commission's letter no. 23/2006-PSII dated 14<sup>th</sup> July 2006 which runs to 18 pages, you may obtain the same on payment basis. You may deposit the document's charges, as per the Right to Information (Regulation of Fee & Cost) Rules, 2005, the charges for obtaining the above said 18 pages documents will be Rs. 36/- (Rs. Thirty Six only) at the rate of Rs. 2/- per page. You may deposit the said amount by way of cash against proper receipt or by demand draft or banker's Cheque in favour of Under Secretary, Election Commission of India and in the case of the fee by way of Indian Postal Order, it must also be made payable to the Under Secretary, Election Commission of India, payable at "Post Office, Nirvachan Sadan, New Delhi."

Yours faithfully,

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Sd/-  
(S..R.KAR)  
UNDER SECRETARY &  
PUBLIC INFORMATION OFFICER

TRUE COPY

ADVOCATE

55

ANNEXURE: P-4

Tele: 35054

Addl Dte Gen Personnel Service  
Adjutant General's Branch  
Integrated HQ of MoD (Army)  
New Delhi-110 105

B/25222/AG/PS-2(c)

16/10 Nov.07

Brig H.S. Ghuman, SC(Retd.)  
Indian Ex-Services League  
Punjab & Chandigarh.  
1043, Sector 71  
Mohali, Chandigarh-160 071.

EVOLVING FOOL PROOF, EFFICIENT & PRACTICAL  
METHOD OF REGISTERING ARMED FORCES & THEIR  
FAMILY MEMBERS IN THE ELECTORAL ROLLS AT THEIR  
PLACE OF POSTING.

Sir,

1. Please refer to your letter No. AIVCG / FVR /07/19  
dated 02 Nov. 07 addressed the Secretary, Rajya Sabha  
Secretariat, Parliament Standing Committee on Grievances with  
a copy to ADG PS amongst others.

2. It has been our constant Endeavour to improve the voting  
profile of personnel of Defense Forces. Recently in the month of  
May 07 we had a meeting with the representative of Election  
Commission of India to discuss the procedure of registration of  
services voters and exercise of franchise with an aim to further  
streamline the procedure. Some of the highlights of the  
discussion are as under:-

(a) The process of enrolment of service voters in the electoral  
roll shall be streamlined in such a way that the percentage  
of enrolment against the total strength of service voters

goes up in a significant manner, in short time with a view to encourage the participation of service voters in the election process.

- (b) The enumeration will become more meaningful when the enrolled service voters is in a position to exercise his franchise in time, following any one of the existing methods (postal ballot, proxy or vote in person).
- (c) The practical problem in dispatching the ballot paper from the Returning Officer's end to the service voter and receiving the postal ballot paper by post within short time due to inherent postal delay is identified as the major reason for poor participation of the service voters in the election process. It was felt that the ways and means should be found to reduce this delay by the Election Commission.
- (d) Whenever house-to-house enumeration takes place in cantonment area, the work shall be done by the staff of ERO and the Camp Commandant shall ensure all necessary help for the enumerator to enumerate eligible service personnel.
- (e) As a proof of residence, the copy of Movement Order or an endorsement by the service personnel from the administration shall be accepted by the ERO towards proof of residence as the service personnel do not have other document in support of their claim of ordinary residents at the place of posting.
- (f) The process of sending of Form 2 & 2A to the Record Office and to various election authorities (District Electoral Officer / Chief Electoral Officer) and action taken thereon, shall be monitored by devising an appropriate tracking mechanism. In the absence of such tracking mechanism, it is difficult to



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pinpoint where the delay is taking place. It is felt that  
CEOs have to periodically review the performance of DEOs  
/ EROs on this count.

3. In addition to the above, the environment has been  
requested to examine the proposal of utilization of the services  
of Re-employed officers to assist in the task of registration of  
service voters and their family members.

Sd/- Paramvir Singh  
Col.  
Dir PS-2  
For Adjutant General

TRUE COPY

ADVOCATE

58  
ANNEXURE: P-5

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN

ASHOKA ROAD, NEW DELHI

No. 24/2008-ERS

Date: 28<sup>th</sup> December, 2008.

To

Chief Electoral Officers  
All States and UTs

Subject: Special campaign for enrolment of Service Voters and proxy facility.

Sir,

1. I am directed to state that the Commission has reviewed the position of enrolment of Service Voters in the last part of the electoral rolls and has declared to take certain steps to increase the enrolment of service personnel in the last part of the electoral rolls and increase awareness about the facility of proxy voting.
2. The Commission has decided that the DEO of the district where the service personnel are posted on duty, shall take proactive steps in facilitating their enrolment and making them aware about the provisions of proxy voting. The DEO shall get publicity material like pamphlets and hand bills covering the provisions regarding service voters and proxy voters distributed in the areas where service personnel live within his jurisdiction.
3. The CEOs should first identify, in consultation with DEOs, the locations / cantonments where special campaign for enrolment of service voters and proxy voting facilities need to be taken up. As soon as possible, the DEOs shall also

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undertake special campaign within such cantonments / peace stations after giving adequate publicity for distribution of enrolment forms (Form 2) to the service personnel. They shall coordinate with the Administrative in charge in the peace stations (Station In charge) for this purpose. In the campaign, the DEO shall guide the service personnel in filling Form 2. As a result of the campaign, the DEOs should get prepared a list of Form-2 filled during the campaign period station-wise, and get them forwarded to the respective Record Office by the Station Officer of the station for proper follow up. To enable smooth movement of the applications and the entire process, the DEOs of the area when record offices / peace stations are situated, shall coordinate with the Station In charge. The record officers should attest the form and sort it State wise and forward the forms to the corresponding CEOs for further follow-up at their end. The CEO shall acknowledge the receipt and get them enrolled by respective EROs without any further verification and put the list on the website so that anyone interested can check his / her name. Each CEO shall submit a report by 22<sup>nd</sup> January on the action taken in pursuance of the above instructions.

In the campaign, the service voter should also be explained by DEO that he has the facility of voting either through postal ballot or through proxy. The provisions of postal ballot and proxy voting should be properly explained to the applicants. They should also be explained about the advantages of proxy voting over the postal ballot system in light of the time constraint that is there for postal ballot. Thus, along with the Form 2 & declaration

for enrolment, the Form 13F to mention of proxy (Conduct of Election Rules, 1961) should also be made available to the applicants. Although, Form 13F requires the applicant to fill the serial number in the last part of the electoral roll, the Commission, in order to simplify the process and encourage nomination of proxy, has waived filling up of this detail. The ERO on receipt of this Form 13F shall fill in this data after identifying the serial no. of the elector in the last part and forward the Form 13 for nomination of proxy to the Returning Officer of the Constituency. Applicants should be encouraged to fill in the nomination of proxy in Form 13F along with the Form for enrolment in Form 2. On the Poll day, the proxy shall be able to vote in the Polling Station on behalf of the Service Voter like any other voter. The proxy can be nominated / changed / re-nominated at the will of the Service Voter by sending another Form 13F.

During the campaign, Service personnel should also be explained the advantage of being enrolled a Service Voters (like proof of domicile etc.) in their native places. However, if a Service personnel serving in a peace station intends to register as general voter, he can be registered as a general voter (as against the Service Voter) only if he is residing there with family for a sufficient span of time or provided he is on a tenure posting of 3 years or more in that peace station. In such cases, the Form to be filled shall be Form 6 and all due process and verification by the ERO /BLO shall have to be carried out and facts ascertained before registration as voter by the ERO.

Yours faithfully  
Sd/- (Ritvil Pandey)

True Copy

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP (PIL) No.3775 of 2009

Brig. Hardeep Singh Ghuman (Shaurya Chakra) s/o late Capt.  
Hazura Singh Ghuman, r/o House No.1043, Sector 71, Mohali  
(Punjab). ....Petitioner

Versus

1. Union of India through its Secretary, Ministry of Defense;  
South Block, New Delhi – 110 011
2. Ministry of Home Affairs, Government of India through its  
Secretary, North Block, New Delhi – 110 001
3. Election Commission of India, through its Secretary;  
Nirvachan Sadan, Ashoka Road, New Delhi, 110001.
4. State Election Commissioner, Punjab; Punjab Civil  
Secretariat, Sector 1, Chandigarh.
5. State Election Commissioner, Haryana, Haryana Civil  
Secretariat, Sector 1, Chandigarh.
6. Chief Electoral officer, Union Territory, Chandigarh. Mini  
Secretariat, Sector 9, Chandigarh.
7. Chief Electoral officer Punjab
8. Chief Electoral officer Haryana .....Respondents

**CIVIL WRIT PETITION** under Articles 226/227 of the  
Constitution of India for the issuance of writ in the nature of  
Mandamus or any other writ, order or direction directing the  
respondents:

- (i) To immediately initiate the process of preparation of the  
Electoral Roll for all Defense Areas and Cantonments  
falling within the jurisdiction of this Hon'ble Court;

- (ii) To immediately initiate the process of creating awareness amongst the residents of all Defense Area so that the residents of such area have the option to cast their votes within that very constituency.

In is further prayed that all other reliefs as prayed for in this writ petition may also be granted to the petitioner.

RESPECTFULLY SHOWETH:

1. That the petitioner is a citizen of India. Therefore, the petitioner is competent to invoke the extra-ordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India.
2. That the petitioner is a highly decorated, retired officer of the Indian Army. After retirement, he has been involved in number of Welfare causes related to the Defense Forces. It would be relevant to state here that the petitioner was awarded the Gallantry Award of Shaurya Chakra for the gallantry shown by him in his service to the nation.
3. That the4 petitioner was seized of a huge problem being faced by number of Indian Defense Forces and their dependent family members. The problem was that the said defense officers and their families, who were posted outside their home town, were unable to cast their votes and participate in the election process in the country. After due research, the petitioner found that the Defense Officers and their families members had the option of either being

enrolled in the electoral rolls of their native places or in the Electoral Roll at their place of posting if they so desired. However, partly due to the failure of the respondent No. 4 and partly due to certain misleading orders passed by respondent No. 1, most defense personnel were not even aware that they had this option.

4. That the duty of making the Electoral Rolls for every constituency is laid on the officers of respondent No. 4 as per Sections 15, 21 and 22 of the Representation of People Act, 1950. This Electoral Roll is to be prepared for every area falling within a constituency including the defense area.
5. That now, the petitioner have come to know that the respondents are not discharging their duties under Sections 15, 21 and 22 of the Representation of People Act, 1950. The said Sections are reproduced hereunder:

*" 15 - Electoral roll for every constituency.—For every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission.*

*21. Preparation and revision of electoral rolls.—(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.*

*(2) The said electoral roll—*

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to the House of the People or to the Legislative Assembly of a State; and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

**22. Correction of entries in electoral rolls.**—If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or



(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry;

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him."

6. That the petitioner has received a communication dated 01.10.2006 having No. 4/RTI/62 / 2006 / JS-II / 3559 from the Election Commissioner of India. A copy of the communication dated 01.10.2006 is appended herewith as **Annexure: P-1**. The relevant extract of the communication dated 01.10.2006 is reproduced here as under:

"Item No. 2. Has any house to house enumeration ever been done in the Army Force and Para-military forces areas and if not, why not? Necessary Instructions were issued vide Commissioner's letter No. 24/95-PS-II, dated 20.03.1995, to Authorities concerned with Registration of Service Personnel and endorsed to the Chief Electoral Officers of all States / UTs. However, the legal position does not seem to have been adequately stressed upon the Electoral Registration Officer etc. concerned with the

*Registration of persons in the Electoral Roll. Therefore, during intensive revisions, house to house enumeration of persons living in cantonment area and fulfill the criteria laid down in reply to question 'A' option and desiring to be enrolled as general Electors in place of posting instead of availing the facilities of fictional domicile to get enrolled in the last part of the roll at the native places, has been generally left out. The Commission has, therefore, again issued Instructions reiterating the correct legal position about conducting house to house enumeration of eligible persons residing in cantonment area vide its letter No. 23/2006-PS-II, dated 14.07.2006 and has requested to bring it to the notice of all Electoral Registration Officers concerned for proper understanding and compliance in future."*

From the above, it is obvious that for reasons best known to the respondents, their authorized officers have failed, and, in fact, refused to initiate the process of making the electoral rolls as defined under Sections 15, 21 and 22 of the Representation of People Act, 1950 in the Defense cantonment areas falling within the jurisdiction of this Hon'ble Court. It would be relevant to state here that this violation on the part of the respondents is not only effecting the individual officers / defense personnel posting in these areas but also effecting the family members of such defense personnel as even the family members who are fully eligible to participate in the election process are being denied this right and this opportunity only due to respondents are refusing to treat these defense area at par

with the other areas within constituencies under them. This step motherly treatment being meted out to the defense area is resulting in a direct violation of the very basic fundamental rights of lacs of Indian citizens. This is denying them from their basic democratic right of casting a vote to elect their leaders.

7. That it has also come to the knowledge of the petitioner that the Army Authorities themselves have played a very negative role in that whole process. Instead of fighting for the rights of these individuals residing in Defense areas, the Army, in fact, has by their actions created disinformation and confusion in the minds of the effected individuals. In this regard, it would be relevant to mention a special army order having No. SAO-16/ S/72 wherein the order states:

*"16. Service Voters are authorized to vote only by postal ballot. They cannot vote in any other manner i.e. they cannot vote in person, even they happen to be on leave or otherwise at the place of place of poll on the day of election".*

A copy of the special Army order is appended herewith as **Annexure: P-2**. It would be relevant to state here that this army order is enforcing as of date and is, in fact, absolutely false. It contradicts and contravenes the provisions of the Representation of People Act as well the Registration of Electoral Rule, 1960. It would be relevant to state here that the Hon'ble Apex Court in the case of Wopansao Vs. N.L. Odyuo and others reported as AIR 1971 SC 3123 has laid down:

*" the Statutory fiction confers the right to be registered as electors at their home town or village but the fiction cannot take away the right of the person possessing service qualifications to get themselves registered at a constituency in which they are ordinarily residing, though such places happens to be their place of service."*

From the above, it is obvious that defense personnel have a right and an option to vote either at their place of posting or at the place of their native residence. Consequently, the special army order at Annexure: P-2 issued after the passing of the above detailed judgment is illegal. It would be relevant to state here that as per Section 62 of the Representation of People Act, 1951, the Right to Vote vests only in those individuals whose names are entered and appeared in the Electoral Roll of their particular constituency. Consequently, by denying all the options to the Defense Officers, respondents denied them their very right to vote.

8A That the petitioner has also come in possession of a Notification dated 20.03.1995 issued by the Election Commission of India to the Govt. of India with regard to the registration of persons having service qualifications. As per para 4.2 of the said Notification, the respondents have stated that *"Those persons having service qualification other than those who are employed under the Govt. of India in a post outside India and who are posted in a place which is their actual place of ordinarily residence and who do not*

wish to avail themselves of the fictional domicile under Section 20(8) of the Act can get themselves registered as electors in their actual place of residence as general electors." Further, as per Clause 4.4 of the said Notification, "In the later category of cases i.e. those who like to register themselves at their actual place of residence by virtue of being ordinarily resident there, can get themselves enrolled at the time of house-to-house enumeration or by filing an application in Form 6 appended to the Registration of Electors Rules, 1960 as ordinarily electors and not as service electors". A copy of the communication dated 20.03.1995 is annexed herewith as **Annexure: P-3**. It would be worthwhile to point out here that 'fictional domicile' refers to the actual native place where a person originally belongs while the place of posting becomes the 'ordinary' place of residence for defense personnel. There is no time span of residence prescribed under the Act for the purposes of 'ordinary residence'.

9. That it would be relevant to state here that it is incumbent upon the respondents to provide this option to the petitioner and other similarly situated individuals within the defense area under the jurisdiction of this Hon'ble Court. The respondents have connived to deny this option to residents of defense areas. It is because of this connivance that the special army order was passed and that the Election Commission of India has failed to initiate the process of preparation of Electoral Rolls within defense areas. This is leading to a situation where lacs of individuals residing within the defense areas are being

denied their right to caste vote due to actions of the respondents.

10. That the other option of casting a vote by postal ballot is also actually a farce as admitted in the communication dated 16.11.2007 issued by the office of the Adjutant General Branch, Integrated Headquarters of Ministry of Defense (Army), New Delhi. The said communication admits that *"the practical problem in discharging the ballot paper from the Retuning Officer's end to the service voters and receiving the postal ballot paper by post within short time due to inherent postal delay is identified as the major reason for poor participation of the service voters in the election process"*. A copy of the communication dated 16.11.2007 is annexed herewith as **Annexure: P-4**. It would be obvious that the option of postal ballot has thus defeated the very purpose in which it was created. It is not possible to caste a vote by way of ballot paper due to the reasons practically delays and inconvenience. In such a situation, the petitioner and lacs of similarly situated citizens of India are left with no option whatsoever. They have been deprived of participation in the most important democratic process of the country. *It is also mentioned in the same communication in that electoral officers shall be conducting survey in cantonments and that military officers would be extending full co-operation for the said purpose.*

11. That the petitioner has now come into possession of a letter dated 28.12.2008 written by the Election Commission

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of India, Chief Electoral Officers of all States and Union Territories. It would be relevant to state here that in the said letter, respondent No. 4 has illegally added certain conditions for being registered in the Electoral Roll as a General Voter with regard to the Defense Officers and their families. It has been stated therein that '*however, if a Service personnel serving in a peace station intends to register as a general voter, he can be registered as a general voter (as against Service Voter) only if he is residing there with family for a sufficient span of time or provided he is on a tenure posting of 3 years or more in that peace station*'. From the above, it is obvious that this communication has added certain conditions which are not provided for by any Rule / Statute. Consequently, the said conditions are absolutely illegal and cannot be given effect to. A copy of the communication dated 28.12.2008 is appended herewith as Annexure: P-5. Such a condition is not even being imposed on migrant populace shifting from place to place within the country. The Election Commission has in fact agreed in a reply to the *ibid* RTI application that there is no such time period restriction for electoral registration and it is merely to be done to the satisfaction of the officers.

12. That the following substantial questions of law arise for adjudication by this Hon'ble Court:

- (a) Whether or not, respondent No. 4 has failed to discharge its duty enshrined in Sections 15, 21 and 22 of the Representation of People Act, 1950?

- (b) Whether or not the respondents have denied the Officers and their families the very Right to Vote?
  - (c) Whether or not the actions of respondents have resulted in violation of Article 14 of the Constitution of India?
  - (d) Whether or not as per the Representation of People Act, 1950, the respondents have failed to initiate the process of preparation of the Elector Rolls for all Areas?
13. That faced with the present facts and circumstances, the petitioner is left with no other efficacious remedy except to approach this Hon'ble Court by way of present writ petition.
14. That Petitioner has not filed any other same or similar writ petition in regard to the present subject matter either before this Hon'ble Court or before the Hon'ble Supreme Court of India.
15. That in view of the facts and circumstances explained above and the submissions made therein, it is respectfully prayed that:
- (i) the records of the case be summoned;
  - (ii) the writ of Mandamus or any other writ, order or direction directing the respondents:
    - (a) to immediately initiate the process of preparation of the Electoral Roll for all Defense Area falling within the jurisdiction of this Hon'ble Court;
    - (b) to immediately initiate the process of creating awareness amongst the residents of all Defense



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Area so that the residents of such area have the option to caste their votes within that very constituency.

- (iii) any other writ, order or direction be issued which this Hon'ble Court may deem fit and appropriate in the peculiar facts and circumstances of the present case;
- (iv) the requirement of issuance of advance notices may please be dispensed with;
- (v) vfilling of typed copies / certified copies of Annexures may kindly be dispensed with;
- (vi) this writ petition may please be allowed with costs.

PLACE CHANDIGARH

PETITIONER

DATED: 26-02-09

(Sh. Veesh Gupta)

Advocate

Counsel for the Petitioner

VERIFICATION:

Verified that the contents as stated in Para No. 1 to 11 and 14 to 15 of the Writ Petition are true and correct to my knowledge and that of paras 12 and 13 are based on legal advice. No part of it is false and nothing material has been kept concealed therefrom.

CHANDIGARH

DATED: 26-02-09

PETITIONER

*True Copy*

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**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

I.A. NO. \_\_\_\_\_ OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**APPLICATION FOR PERMISSION TO BRING  
ADDITIONAL DOCUMENTS ON RECORD**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner has preferred the present Special Leave Petition against the impugned final judgment and order dated 22.08.2013 passed by the Division

Bench of the Hon'ble High Court of Punjab and Haryana in CWP No.3775 of 2009.

2. That the Petitioner respectfully submits that the Public Interest Litigation had been instituted before the Hon'ble High Court by the Proforma Respondent No.7 before this Hon'ble Court in the present Petition. Therein although the Special Army Order No. SAO-16/S/72 had been brought on record before the Courts (Annexure P-1, to this present Petition), a crucial amendment brought in it vide Army Order No. A.O. 15/95. It is respectfully submitted that the amending order of A.O.15/95 had not formed part of the documents in the Court below. A copy of the Army Order bearing No. A.O. 15/95 regarding elections Army Personnel (Amendment No.3) is annexed hereto as ANNEXURE P-7. (At pages 79 to 82)
3. That the aforesaid Army Order bearing number A.O. 15/95 did not form part of the record before the High Court, this Application is being moved for proper adjudication of the case.
4. That it will be in the interest of justice that the additional document filed by the Petitioner be allowed to be taken on record.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the Petitioner to place on record the additional document i.e., Annexure P-2 to the Special Leave Petition; and
- b) pass any such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT  
AS DUTY BOUND SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

FILED ON: 11.02.2014  
NEW DELHI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**AFFIDAVIT**

I, Rajeev Chandrasekhar, son of Air Cdre. M.K. Chandrasekhar (Retd.), aged about 46 years, resident of 211, North Avenue, New Delhi 110011, do hereby solemnly affirm and state as under:

1. That I am the Petitioner in the abovementioned Petition and as such, I am well conversant with the facts and circumstances of the present case and I am fully competent to depose by way of the present Affidavit.
2. That I have read through the contents of the accompanying application(s) and say that the contents of thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

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3. I say, that the contents of the accompanying Application may kindly be read as part of the present Affidavit and the same are not being repeated herein for the sake of brevity.

x *Roseanna*

DEPONENT

VERIFICATION:

I, the abovenamed Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Delhi, on this the 10th day of February, 2014.

x *Roseanna*

DEPONENT

ANNEXURE-P-7

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## ARMY ORDERS

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### ADJUTANT GENERAL'S BRANCH

#### **A.O. 15/95 – S.A.O. 16/S/72 regarding, Elections- Army Personnel (Amendment No.3)**

SAO 16/S/72 is amended as under:-

- (a) On Page 1 in line 1 of Para 1 (b), for '21' read '18'.
- (b) On Page 2 in line 2 of Para 7, for '21' read '18'.
- (c) The following paragraphs may be added after Para 10(a):-

"11. Under the election law, the members of the Armed Forces of the Union; or of a force of which provisions of the Army Act, 1950 (46 of the 1950), have been made applicable, whether with or without modification, or members of an Armed Police Force of a State serving outside that State and persons employed under the Government of India in a post outside India are treated as persons having 'Service Qualification' and these persons are deemed to be 'ordinarily resident' on any date in the constituency in which, but for having such service qualification, they would have been ordinarily resident on that date. The wives of service electors, if ordinarily residing with

their husbands, are also deemed to be ordinarily resident in the constituency.

12. The provisions of the election laws do not, however, deprive any person having 'Service Qualification' the right to get enrolled as a general elector in the electoral roll his place of posting if that place happens to be his actual place of ordinary residence.

13. To ensure that all service electors are able to enroll themselves and also exercise their franchise, the correct procedure to be followed in the matter of registration of service electors is outlined hereunder for the information of all concerned:-

(a) All persons having 'Service Qualification' under section 20(8) of the Representation of the People Act 1950 can avail themselves of the facility of fictional domicile under section 20(8) of the Representation of the People Act, 1950 and get themselves registered as electors in their original (native) home town or village where they would have been ordinarily resident but for their service qualification;

(b) Those persons having service qualification other than those who are employed under the



Government of India in a post outside India and who are posted in a place which is their actual place of ordinary residence and who do not wish to avail themselves of the fictional domicile under Section 20(8) of the Act can get themselves registered as electors in their actual place of residence as general electors;

(c) In the former category of cases in those who elect the benefit of the fictional domicile should apply in Form-2 appended to the Registration of Electors Rules, 1960, and will be registered as 'service electors';

(d) In the latter category of cases ie those who like to register themselves at their actual place of residence 'by virtue of being ordinarily resident there, can get themselves enrolled at the time of house-to-house enumeration or by filing an application in Form-6 appended to the Registration of Electors Rules, 1960 as ordinary electors and not as service electors;

(e) Only those service personnel who had remained in the State/Place of posting for a sufficient span of time with their families and can genuinely claim to be ordinarily residents in the

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area are eligible to be enrolled as electors in the general part of electoral roll;

(f) When once a service voter is enrolled as an ordinary elector in the general part of the electoral roll, he can vote only in person in a polling station set up for the purpose.

(d) Paragraphs Nos. from 11 to 23 be renumbered as serial Nos. 14 to 26.

**B/25222/AG/PS/Coord**

**(MM LAKHERA)**

**Lt Gen**

**Adjutant General**

*True Copy*

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**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

I.A. NO. \_\_\_\_\_ OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**APPLICATION FOR EXEMPTION FROM FILING  
CERTIFIED COPIES**

To

Hon'ble The Chief Justice of India and

His Hon'ble Companion Justices of the Supreme Court of  
India

The humble petition of the petitioner abovenamed:

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner has preferred the present Special Leave Petition against the impugned final judgment and order dated 22.08.2013 passed by the Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No.3775 of 2009.

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2. That the facts leading to the present application are fully narrated in the accompanying petition and the same are not being repeated herein for the sake of brevity. The Petitioner craves the leave of this Hon'ble Court to refer to and rely upon the same at the time of hearing of the present petition.
3. That the impugned order was passed by the Hon'ble Division Bench of the High Court of Punjab and Haryana on 22.08.2013, and that the Petitioner came to know about the same from media reports and acquaintances in the armed forces since he was not a party to the aforesaid proceedings before the Hon'ble High Court in CWP. No. 3775 of 2009.
4. That the Petitioner was unable to obtain certified copy of the impugned order dated 22.08.2013 and is seeking exemption from this Hon'ble Court to file certified copy of the impugned order in the accompanying Special Leave Petition and has filed the true copy of the same.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

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- a) exempt the Petitioner from filing certified copy of the impugned final Order dated 22.08.2013 passed by the Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No. 3775 of 2009; and
- b) pass any such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT  
AS DUTY BOUND SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

FILED ON: 11.02.2014  
NEW DELHI

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**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

I.A. NO.                      OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO.                      OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**AFFIDAVIT**

I, Rajeev Chandrasekhar, son of Air Cdre. M.K. Chandrasekhar (Retd.), aged about 46 years, resident of 211, Ne North Avenue, New Delhi 110011, do hereby solemnly affirm and state as under:

1. That I am the Petitioner in the abovementioned Petition and as such, I am well conversant with the facts and circumstances of the present case and I am fully competent to depose by way of the present Affidavit.
2. That I have read through the contents of the accompanying application(s) and say that the contents of thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

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3. I say, that the contents of the accompanying Application may kindly be read as part of the present Affidavit and the same are not being repeated herein for the sake of brevity.

  
DEPONENT

VERIFICATION:

I, the abovenamed Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Delhi, on this the 10th day of February, 2014.

  
DEPONENT

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. \_\_\_\_\_ OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**APPLICATION FOR CONDONATION OF DELAY IN FILING**

**SPECIAL LEAVE PETITION**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner has preferred the present Special Leave Petition against the impugned final Order and judgment dated 22.08.2013 passed by the Division



Bench of the Hon'ble High Court of Punjab and Haryana in CWP No.3775 of 2009.

2. That the Petitioner respectfully submits that he only recently came to be aware of the aforementioned dismissal of the writ petition vide the impugned judgment and order of the Hon'ble High Court dated 22.08.2013. It is further submitted that the Petitioner being keenly interested in issues pertaining to the Armed Forces, sought legal counsel in this regard for effectively guarding and enforcing the rights of the armed forces personnel. It is humbly submitted that the process took an amount of time contributing to the delay in filing of this Special Leave Petition for which condonation is being sought from this Hon'ble Court.
3. That the delay is neither intentional nor caused by any default on the part of Petitioner but has been occasioned by reasons beyond the control of the Petitioner.
4. That the instant Application is filed bona fide and in the interest of justice and no prejudice would be

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caused to the Respondent in the even that this application were to be allowed.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Condone the delay of \_\_\_\_\_ days in filing the accompanying Special Leave Petition against the impugned judgment and order dated 22.08.2013 passed by the Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No.3775 of 2009;
- b) pass any such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT  
AS DUTY BOUND SHALL EVER PRAY.

FILED BY:

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

FILED ON: 11.02.2014  
NEW DELHI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**AFFIDAVIT**

I, Rajeev Chandrasekhar, son of Air Cdre. M.K. Chandrasekhar (Retd.), aged about 46 years, resident of 211, North Avenue, New Delhi 110011, do hereby solemnly affirm and state as under:

1. That I am the Petitioner in the abovementioned Petition and as such, I am well conversant with the facts and circumstances of the present case and I am fully competent to depose by way of the present Affidavit.
2. That I have read through the contents of the accompanying application(s) and say that the contents of thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

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3. I say, that the contents of the accompanying Application may kindly be read as part of the present Affidavit and the same are not being repeated herein for the sake of brevity.

*Rescena*

DEPONENT

VERIFICATION:

I, the abovenamed Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Delhi, on this the 10th day of February, 2014.

*Rescena*

DEPONENT

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**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

I.A. NO. \_\_\_\_\_ OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR

... Petitioner

VERSUS

UNION OF INDIA & ORS.

... Respondents

**APPLICATION FOR PERMISSION TO FILE SPECIAL  
LEAVE PETITION**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner has preferred the present Special Leave Petition against the impugned final judgment and order dated 22.08.2013 passed by the Division

Bench of the Hon'ble High Court of Punjab and Haryana in CWP No.3775 of 2009.

2. That the facts leading to the present application are fully narrated in the accompanying petition and the same are not being repeated herein for the sake of brevity. The Petitioner craves the leave of this Hon'ble Court to refer to and rely upon the contents of the petition when this Application is taken up for hearing.
3. The Petitioner herein is a citizen of India and has been an independent Member of the Rajya Sabha, since May 2006. The Applicant was elected to the Rajya Sabha in 2006 and once again, re-elected unopposed in 2012. The Applicant holds a Bachelor's degree in Electrical Engineering from the Manipal Institute of Technology, Mangalore University, Karnataka; a Master's Degree in Computer Science from Illinois Institute of Technology, Chicago (which has also recognised him as a distinguished Alumnus); and has attended Management Programmes at Harvard University, Boston. It must be noted herein that prior to being elected to the Parliament, he founded BPL Mobile, and was one of

the pioneers in developing India's first and largest greenfield telecom infrastructure. BPL Mobile had invested in and built world-class telecom infrastructure in the metropolis of Mumbai and the circles of Maharashtra, Tamil Nadu and Kerala and laid the foundation of the telecom revolution in India.

4. Apart from being an industry leader in the telecom domain, the Applicant was one of the youngest national Presidents of the Federation of Indian Chambers of Commerce and Industry (FICCI), India's apex industrial body. As the President of FICCI, the Applicant was responsible for initiating wide ranging reforms in multiple industry verticals. Since his election to the Upper House of the Parliament in 2006, the Applicant in his capacity as an independent Member of the House, has raised various issues of concern relating to technology, privacy and internet freedoms. The Applicant has consistently fought for transparency in policies and processes pertaining to the telecom sector and in particular, has been instrumental in ensuring transparency in the process of distribution of government largesse in the telecom sector.

5. The Petitioner further has championed the cause of freedom of speech and expression of all classes of citizens, as a representative of the people and as a member of the political class who believes in the right of political dissent and right to express one's views. The Applicant has initiated multiple public interest actions in the High Court of Karnataka and in the Supreme Court of India on a wide range of issues including land – both public and government, rights of local communities to public infrastructure; right to privacy and the right to freedom of expression vis-a-vis the internet and intrusive regulation of the internet by the State.
6. That the Petitioner has led a campaign inside and outside Parliament for setting up of a National Memorial to our armed forces in Delhi. As Chairman of the National Military Memorial Committee at his initiative Independent India's First Military Memorial is coming up in Bangalore. It is most respectfully submitted that as the founder trustee of Flags of Honour Foundation he has helped war widows, families of martyred soldiers, restored ParamVir Chakra winner Abdul Hameed's memorial in UP. It is



further submitted that now he is leading a campaign to enable armed forces personnel to vote, and his petition to the Election Commission is available on [www.change.org](http://www.change.org) wherein he is presently advocating the cause through signatures and missed call campaign, which has evoked strong support from across the country.

7. That the impugned order was passed by the Hon'ble Division Bench of the High Court of Punjab and Haryana on 22.08.2013, and that the Petitioner came to know about the same from media reports and acquaintances in the armed forces since he was not a party to the aforesaid proceedings before the Hon'ble High Court in CWP. No. 3775 of 2009.
8. That at present the entire issue of 'right to vote', especially that of the armed forces personnel, the very nature of whose service compels them to be stationed at places away from their native constituencies, has assumed great significance in light of the forthcoming General Elections. The Order passed by the Hon'ble High Court adversely affects a significant number of citizens who despite their efforts for many long years had not been able to

enforce their constitutional right in this regard. Since the petitioner before the Hon'ble High Court, who had instituted the public interest litigation, has not appealed the impugned order as yet, such a significant right of the armed forces personnel in a constitutional democracy runs the risk of lying without remedy. In view of the same, the Petitioner has been left with no remedy but only to challenge the said Impugned Order.

9. That the instant application is filed *bona fide* and in the interest of justice and no prejudice would be caused to the Respondents in the event that this application is allowed.

**PRAYER**

Therefore, in light of the aforesaid facts and submissions, the Petitioner herein most respectfully prays that this Hon'ble Court may be pleased to:

- a) permit the Petitioner to file Special Leave Petition against the impugned final judgment and order dated 22.08.2013 passed by the Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No. 3775 of 2009; and

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- b) pass any such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT  
AS DUTY BOUND SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

FILED ON: 11.02.2014  
NEW DELHI

/00

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**

I.A. NO.                      OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO.                      OF 2014

**IN THE MATTER OF:**

RAJEEV CHANDRASEKHAR                      ... Petitioner

VERSUS

UNION OF INDIA & ORS.                      ... Respondents

**AFFIDAVIT**

I, Rajeev Chandrasekhar, son of Air Cdre. M.K. Chandrasekhar (Retd.), aged about 46 years, resident of 211, North Avenue, New Delhi 110011, do hereby solemnly affirm and state as under: Ne

1. That I am the Petitioner in the abovementioned Petition and as such, I am well conversant with the facts and circumstances of the present case and I am fully competent to depose by way of the present Affidavit.
2. That I have read through the contents of the accompanying application(s) and say that the contents of thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

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3. I say, that the contents of the accompanying Application may kindly be read as part of the present Affidavit and the same are not being repeated herein for the sake of brevity.

*Rosehan*  
DEPONENT

VERIFICATION:

I, the abovenamed Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at Delhi, on this the 10th day of February, 2014.

*Rosehan*  
DEPONENT