
(2003) 06 GAU CK 0032
In the Gauhati High Court
Case No : Writ Appeal No. 251 of 1999

A. Inbam(Constable)	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 05-06-2003

Acts Referred:

Army Rules, 1954 — Rule 22, 23, 24, 25
Border Security Force Act, 1968 — Section 106, 117(2), 141, 16, 2
Border Security Force Rules, 1969 — Rule 40, 45, 45(1), 45(2), 45A
Constitution of India, 1950 — Article 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 480, 482
Evidence Act, 1872 — Section 87
Penal Code, 1860 (IPC) — Section 193, 228, 302, 304A

Citation : (2003) 2 GLT 610

Hon'ble Judges : P.P. Naolekar, C.J; Amitava Roy, J

Bench : Division Bench

Advocate : A.K. Roy, for the Appellant; G.P. Bhowmick, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The Appellant as writ Petitioner had assailed the legality and validity of the proceedings relating to his arrest, investigation and trial by the General Security Force Court(hereinafter referred to as the "Court") culminating in the sentence of imprisonment for life and dismissal from service. His challenge having been negated by the learned Single Judge, he has preferred this appeal.

2. We have heard Mr. T.C. Khetri, learned Counsel for the Appellant and Mr. G.P. Bhowmick, learned Additional C.G.S.C. for the Respondents.

3. The factual matrix relating to the controversy has to be presented to comprehend the issues involved. The case of the Appellant as narrated in the writ petition be noticed first. The Appellant, at the relevant time, was a constable in the 193 Battalion of the Border Security Force (hereinafter referred to as the "Force") on 10.5.93 when his Battalion was posted at Baramulla (Kashmir), he was arrested on the allegation of committing murder of his colleague and room-

mate Lance Nayak B.L. Reang. According to him, at the time of his arrest, he was not furnished with any document and was also not informed in writing about the particulars of the charge against him as required under Rule 40 of the Border Security Force Rules, 1968(hereinafter referred to as the "Rules"). He has asserted that neither the charge nor any witness in support thereof was heard by the Commandant of the Battalion as required under Rule 45 of the Rules, before remanding him for recording of evidence. Eventually, he was tried by the "Court". He was charged u/s 46 of the Border Security Force Act, 1968(hereinafter referred to as the "Act") for having committed a civil offence u/s 302 IPC. At the trial, the Appellant was represented by a Defending Officer but as he was not informed by his Defending Officer about the vitiating effect of the noncompliance of Rule 40 and 45 on the proceeding and therefore at the relevant time, he could not raise the plea with regard to the jurisdiction of the court as permissible under Rule 72 of the Rules. In all, 21 witnesses were examined in support of the charge. Though he submitted his written statement, he did not examine any witness in defence. At the conclusion of the trial and on completion of the prescribed formalities, the court on 8.9.95 declared him guilty of the charge and after considering his submissions with regard to the sentence, ordered him to suffer R.I. for life and further dismissed him from service. Thereafter the finding and sentence of the Court were confirmed by the convening and confirming authority and the Appellant was sent to Civil Jail in terms thereof. The Appellant thereafter submitted a post confirmation representation before the appropriate authorities which was however rejected and the decision was communicated to him by letter dated 9.12.96(Annexure F to the writ petition). According to the Appellant, his arrest and detention in force custody was illegal and in contravention of Rule 40 of the Rules. Further, the trial before the court was illegal and void ab initio due to the failure to comply with the mandatory requirements of Rules 45 of the Rules. He challenged the findings and sentence of the Court also on the ground that the same were manifestly erroneous, inasmuch as, the charge against him had not been proved. He also assailed the order of rejection of his post confirmation representation as mechanical without any application of mind.

4. The Respondents in their counter, while denying the allegation of non-compliance of Rules 40 and 45 of the Rules have asserted that the Appellant-writ Petitioner who was a constable with the Force at the relevant time was serving in "D" Coy H.Q. at Baramulla. On 12.2.92, while on sentry duty, he left his post at about 2000 hrs and went to a nearby locality known as Sweeper Basti where he tried to lure a woman into an immoral act. The lady raised alarm, on which local residents came out to apprehend him when in order to disperse them he fired one shot from his service rifle. The incident was reported to the Coy. Commandant by L/NK B.L. Reang of the same Coy. Taking a lenient view of the incident, the Appellant-writ Petitioner, after being tried u/s 16(a) of the Act was awarded 28 days of R.I. in Force custody. According to the Respondents, since then, the Appellant nursed a personal grudge against said L/NK B.L. Reang. On

10.5.93, while the Appellant was serving with the same Coy at GPO Baramulla, he consumed liquor and picked up quarrel with L/NK B.L. Reang at about 1850 hrs. He with the rifle of Anr. constable, Thangzalun, fired 7 shots at L/NK B.L. Reang killing him. The Appellant was eventually tried by the Court from 20.6.95 and as the charge u/s 46 of the Act, read with Section 302 of the IPC was proved against him, he was sentenced to suffer R.I. for life and was further dismissed from service. The answering Respondents have stated that the confirming authority after due deliberations confirmed the sentence on 21.11.95 and accordingly it was promulgated on 30.11.95. The Appellant was thereafter handed over to the appropriate authorities for undergoing his sentence in Civil Jail, Shillong. According to the Respondents, the Appellant from before the trial was Defendant by his Advocate and a defending officer of his choice. Denying the allegation that the Appellant was falsely implicated in the offence, the Respondents have maintained that after the incident, he was placed under close arrest and suspension with effect from 11.5.93 by the order of the then the Commandant. The information was lodged by ex-Subedar, B.P. Chatterjee, Coy Commander. On receiving the information, the officiating Commandant of the unit gave instructions to the Coy Commander to disarm the Appellant/writ Petitioner and put him under guard. The Respondents have contended that the Appellant was informed by an administrative order under Rule 40 of the Rules that he had been placed under close arrest and suspension with effect from 11.5.93 and that a Criminal offence committed by him was under investigation. The Respondents have stated before the recording of evidence, an official was detailing for hearing of the offence from the Appellant on 12.5.93 and thereafter he was produced before the officiating Commandant alongwith the offence report in compliance of "Rule 45(A) and 45(B) of the Rules. They have maintained that Rule 45 of the Rules was also complied with and the proceeding thereunder was held on 13.5.93. A copy of the record of evidence was also furnished to the Appellant on 5.6.95. They have asserted that while conducting the trial all provisions of the Act and the Rules have been strictly followed and the Appellant was provided all reasonable opportunities to defend himself. They have asserted that the Appellant was provided due opportunity to call his witnesses but he declined. He also submitted an unsworn statement by him before the Court. The Court also put questions to him. After the recording of evidence of the witnesses in support of the charge was over, the court also examined the case under Rule 98 of the Rules and being fully satisfied that the charge against" the Appellant was proved, recorded the finding of guilt and sentenced him. The sentence imposed on the Appellant, according to the Respondents is commensurate to the gravity of the offence. With regard to the representation submitted by the Appellant, the stand of the answering Respondents is that the same was duly considered along with the proceedings of the trial by the concerned authority and it was rejected by order dated 9.12.96.

5. Mr. Khetri, learned Counsel for the Appellant has argued that the actions taken by the Respondents against the Petitioner/Appellant relating to his arrest,

investigation and trial by the court are all vitiated by the non-compliance of the provisions of the Act and the Rules and therefore his conviction and sentence is clearly not sustainable in law on the face of the records and is liable to be adjudged as such. He has contended that the Appellant at the time of his arrest was not informed in writing about the particulars of the charges against him as required under Rule 40. Further, the mandatory requirements of Rule 45(1) were also not complied with, inasmuch, as neither the charge against him was heard by the Commandant, nor any witness was examined by him (Commandant) in his presence, for which he was seriously prejudiced. According to the learned Counsel, the Appellant was also not provided with an opportunity to cross-examine the witnesses and make a statement in his defence as required by Rule 45, the learned Counsel contended that the decision of the Commandant in the above premises for preparing a record of evidence under Rule 45(2) was grossly illegal and this vitiated the process leading to the convening of the Court for the trial. The learned Counsel has argued that as the mandatory provision of Rule 45 had been violated by the Respondents all subsequent stages of the proceeding suffered from jurisdictional error and therefore the trial before the court is ex-facie, null and void. According to him, had the charge been heard and the witnesses in support thereof would have been examined in presence of the Appellant and an opportunity of cross-examining them would have been provided to him, there might not have been any occasion for the Commandant to order recording of evidence. According to the learned Counsel, the omission on the part of the Respondents to ensure the procedural safeguards contained in Rule 45 strikes at the root of the process rendering it foundationally invalid. He has contended that the procedure prescribed by Rule 45, 48 and 51 delineate a scheme and if there is a contravention of any one of the aforesaid provisions, the process envisaged by the scheme gets vitiated thereby rendering the same wholly illegal and nonest. According to him, the Rules being statutory, in nature, it was incumbent upon the Respondents to establish that the prescription thereto had been complied with whether or not any objection thereto was taken. Contending that no such attempt had been made by the Respondents at any stage of the proceeding, the learned Counsel urged that the inevitable consequence would be that the entire process right from the point of the arrest of the Appellant till his conviction and sentence would be rendered illegal and unsustainable in law. The learned Counsel was also critical about the delay that had occurred between the arrest of the Appellant on 10.5.93 and the trial in the year 1995 though in the meantime the recording of evidence was completed in the year 1993. This, the learned Counsel contended was in contravention of Section 58 and 59 of the Act. With regard to the merit of the charge, Mr. Khatri strenuously argued that the Respondents had failed to prove the charge and that the Court committed a manifest illegality by recording his guilt and sentencing him as above. Without prejudice to his said submission the learned Counsel argued that assuming that the evidence adduced in support of the charge is taken on its face value, even then no offence of murder was made out against the Appellant and at best he could have been convicted u/s 304(A) of the IPC.

According to him, the rejection of the post confirmation representation submitted by the Appellant has been mechanical and is in complete violation of the right of the Appellant secured u/s 117(2) of the Act. He contended that keeping in view the serious consequences that would follow, it was incumbent on the concerned authority to consider all relevant aspects of the matter in deciding the representation. That not having been done, Mr. Khetri contended that the order of confirmation was palpably illegal and not sustainable in law. In support of his submissions, the learned Counsel has placed reliance of the following authorities:

Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others,

1997 (2) GLJ 343

HAV/CLK Amarjit Singh, Appellant v. Chief of the Army Staff, Army H.Q. New Delhi and Ors., Respondents.

1997 (2) GLJ 507

NB Sub Baleswar Ram and Ors., Petitioners v. Commanding Officer 855(now 7004) Combined Workshop EME (C/O. 99. APO) and Ors., Respondents.

1998 (2) GLT 19 : (1998) 3 GLR 276

Anil Kumar Bajpai, Petitioner v. Union of India and Ors., Respondents.

6. The learned Counsel for the Respondents on the other hand, has submitted that the procedure prescribed by the Act and the Rules had been scrupulously followed in the instant case and there is no room for the Appellant to contend otherwise. According to him, all reasonable opportunities were granted to the Appellant in the process and at no stage thereof he had raised any objection in that regard. The learned Counsel argued that having regard to the materials on record, the concerned authorities were satisfied that the Appellant ought to be tried by the court on the charge of having committed a civil offence as contemplated u/s 46 of the Act. The court was duly convened and the trial was conducted strictly in accordance with the procedure prescribed in course of which the Appellant was afforded all opportunities due to him under the law. The Appellant defended himself effectively in the trial and was not prejudiced in any manner. The charge against him having been fully proved, the Court recorded a finding of guilt and after considering the submissions on behalf of the Appellant on the question of sentence awarded him the sentence of R.I. for life and dismissal from service. The learned Counsel for the Respondents argued in the alternative that even if, there is some defect in the procedure adopted in the instant case as the same has not resulted in any prejudice to the Appellant, the same would not have the potential of vitiating the entire proceeding. According to him, considering the state of materials on record, this Court in exercise of its power of judicial review would not interfere with the action taken by the Respondents. The learned Counsel has sought to draw sustenance for his submissions from the following decisions of the Apex Court:

Major G.S. Sodhi Vs. Union of India (UOI),

Major General Inderjit Kumar Vs. Union of India (UOI) and Others,

Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827),

He also produced the relevant records to substantiate his contentions.

7. Before entering into the thicket of the controversy, it is felt appropriate to traverse in brief through the scheme of the Act and the Rules in order to fully appreciate the rival contentions of the parties.

"Civil Offence" as defined in Section 2(d) of the Act means an offence which is triable by a criminal court. u/s 46, a person subject to the Act who commits any civil offence would be deemed to be guilty of an offence against the Act and, if charged therewith under that section, would be liable to be tried by a Security Force Court and on conviction, would be punishable as mentioned therein. Chapter v. of the Act deals with arrest and proceedings before trial. Section 58 prescribe the period for which a person charged with an offence can be detained in custody after his committal therefore when the charge is being investigated. Section 59 specifies the interval of time before the committal of the person charged and his trial by a Security Force Court. Chapter VI specifies the various kinds of Security Force Courts, the composition thereof and their powers. The procedure of Security Force Courts is laid down in Chapter VII of the Act. Section 87 provides that the Provisions of the Indian Evidence Act, 1872 would, subject to the provisions of the Act, apply to all proceedings before a Security Force Court. Section 106 of the Act lays down that any trial by a Security Force Court under the Act would be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the IPC and the Security Force Court would be deemed to be a court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure. Provisions regarding confirmation of finding or sentence of a Security Force Court have been made under Chapter VIII of the Act. u/s 117, a person who considers himself aggrieved by an order passed by any Security Force Court may present a petition to the authorities specified there in both before and after the confirmation of the finding and sentence of any Security Force Court. The manner of execution of sentence and matter relating to pardon, remission etc. have been dealt with in Chapter IX of the Act. Section 141 of the Act confers the rule making power on the Central Government.

8. Chapter v. of the Rules makes provisions with regard to arrest and investigation. Under Rule 40, which is relevant for the present case, a person placed under arrest shall, at the time of being placed under arrest is required to be given in writing, by the officer effecting the arrest, the particulars of the charges against him. Chapter VII of the Rules deal with the investigation and summary disposal. Rule 45 of the Rules with which we are mainly concerned requires that a charge against an enrolled person (means an Under Officer i.e. Head Constable, Naik, Lans Naik of the Force as per the Section 2(k) and 2(x) of the Act) shall be heard by his commandant in course of which, the statements of

witnesses, if recorded, should be read over to him and if written statements of witnesses are not available, the Commandant would hear as many witnesses as he may consider essential to enable him to determine the issue. The said Rule categorically provides that the person charged shall be given an opportunity to cross examine the witnesses and make a statement in his defence. After hearing the charge, the Commandant under Rule 45(2) may take recourse to any one of the four options available to him. He may either award any of the punishments or dismiss the charge or remand the person charged for preparing a record of evidence or an abstract of evidence against him or may remand him for trial by a Summary Security Force Court. The Rule provides amongst Ors. that in case of all offences punishable with death, a record of evidence shall be taken. In other words, after hearing the charge in relation to an offence punishable with death, the Commandant has to order recording of evidence while acting under sub Rule(2) of Rule 45. The recording of evidence as ordered by the Commandant under Rule 45 has to be done in the manner provided in Rule 48. The officer detailed to prepare the record of evidence would, on completion thereof, forward the same to the Commandant as required under Rule 51, whereupon the Commandant after going through the same may either dismiss the charge or re-hear the same and award punishment or try the person by a Summary Security Force Court where he is empowered so to do or apply to a competent officer or authority to convene a court for the trial of the person. Rule 52 refers, to the form in which the Commandant has to apply for convening of the Court and further requires that such application should be accompanied by 5 copies of the record of abstract of evidence and the charge sheet. Chapter VIII of the Rules exhaustively deal with the manner of drawing up of the charge and the contents thereof as well as matters antecedent to trial. The procedure for conducting trial of the Security Force Court is provided under Chapter IX of the Rules. It contains the entire gamut of the relevant provisions commencing from the assembly or swearing of Court till the recording of finding and sentence by the Security Force Court and the confirmation and promulgation thereof.

9. The various provisions of the Act and the Rules as referred to above predicates that the same constitute a self contained Code for dealing with various aspects of investigation and trial of a person charged with an offence under the Act. Though the Act and the Rules provide for other matters including those pertaining to the conditions of service as well, for obvious reasons we have limited our attention to the provisions relevant for the case in hand.

10. The authorities cited at the bar now be referred to In *It. Col. Prithi Pal Singh Bedi v. Union of India* and Ors.(Supra), one of the contentions raised before the Apex Court was that as at the hearing of charge, procedure of recording the summary of evidence etc. as provided under Rule 22 to 25 of the Army Rules, 1954 was not complied with, the order convening the Court martial stood vitiated. It was contended that before a General Court Martial was to be convened, it was obligatory for the Commanding Officer to hear the charge made against the accused in his presence by giving him an opportunity to cross

examine the witnesses and to call any witness and make any statement in his defence. If thereafter the Commanding Officer was satisfied, he could dismiss the charge or pursue one of the several options available to him and then could direct the recording of summary of evidence. After the summary of evidence was recorded, the Commanding Officer had three options, one of which was to remand the case for trial by a Court Martial. It was contended that the failure to comply with Rules 22, 23 and 24, relating to the above stages denied the officer concerned an opportunity to convince the Commanding Officer to dismiss the charge under Rule 22(2) of the Army Rules, 1954. In the said backdrop, the Apex Court while noticing that Rule 22 was mandatorily applicable in respect of every person subject to the Army Act, 1950 other than an officer and that for application of the Rules 22 to 24 a request by the officer concerned was necessary in terms of Rule 25, held that as the Petitioner was an officer and there was nothing on record to indicate that any such request had been made, concluded that the failure to comply with Rules, 22, 23 and 24 did not vitiate the trial by the General Court Martial. The Apex Court further observed that in respect of persons other than an officer, it was mandatory that Rule 22, 23 and 24 were to be followed and there was no escape therefrom except on the ground of invalidation of the enquiry. Before parting with the said issue, the Court however, with reference to an argument based on Article 21 of the Constitution observed that the procedure prescribed in Rule 22, 23 and 24 was at a stage anterior to trial by the Court Martial and that it was the decision of the Court Martial which could result in deprivation of personal liberty and not the order directing the charge to be heard or summary of evidence be recorded or a Court Martial be convened.

11. A similar grievance was expressed in *Anil Kumar Bajpai v. Union of India and Ors.* (supra), inasmuch as, it was contended there that the Commanding Officer of the Petitioner therein did not afford an opportunity of hearing to him on the charge and the evidence in support thereof, as required under Rule 45(B) of the Rules. The facts revealed that though there was a compliance of Rule 45(B) in respect of the charge u/s 30(B) of the Act it was dropped by the Respondents and a fresh charge u/s 40 of the Act was framed against him but the Petitioner was not heard again under Rule 45(B) in respect of new charge. This Court held that the right of the Petitioner to be heard by the Commandant on the charge under Rule 45(B) was not an empty formality and if the nature of the charge was modified, compliance of Rule 45(B) would be required to be repeated. As the same was not done, it was held that the entire proceeding including the trial, the finding and sentence recorded by the "Court" and all consequential orders including the one of confirmation of the finding and sentence of the Court were vitiated.

12. In *N.B. Sub Baleswar Ram and Ors. v. Commanding Officer 855 (now 7004) Combined Workshop EME(C/0 99 APO) and Ors.* (supra), the finding and sentence of the General Court Martial held under the Army Act, 1950 and Army Rules 1954 were assailed on the ground that there had been a contravention of Rule 22 of

the said Rules. This Court while holding that the aforementioned Rule was mandatory noticed that in the facts of that case, there had been a violation thereof, so far as the Petitioner Nos. 2 and 3 were concerned. However, with regard to the Petitioner No. 1 though there was a compliance of the said Rule, the charge against him at the stage of recording of summary evidence was different from the one for which he was tried by the General Court Martial. This Court, therefore, held that Rule 22 was not complied with so far as the Petitioner No. 1 as well and the proceeding of the General Court Martial was held to be in violation of the mandatory provision of Rule 22 of the said Rules and the finding and sentence against all the Petitioners were set aside. The matter was taken in appeal before the Apex Court and in its decision reported in *Union of India (UOI) and Others Vs. Naik Subedar Baleshwar Ram and Others*, the Apex Court sustained the judgment of this Court with regard to the Petitioner No. 2 and 3 but reversed the same so far as it related to Petitioner No. 1 observing that though he faced a different charge before the Court Martial, the basic facts constituting the allegations were not materially different and that there was no prejudice to the Petitioner No. 1, the enquiry under Rule 22 of the trial before the General Court Martial having been conducted over the same facts.

13. In *HAV/CLK Amajjit Singh v. Chief of the Army Staff, Army Head Quarters, New Delhi and Ors.*(supra), the Appellant had pleaded non-compliance of the Army Rules, 1954 while questioning the finding and sentence of the Court Martial. In the facts of the case, this Court held, that the proceeding under Rule 22 of the said Rules was conducted in absence of the Appellant and he was not afforded any opportunity to cross examine the witnesses examined therein. This Court also noticed that no signature of the Appellant was obtained in the format after the proceeding under the aforementioned Rule. It may be worthwhile to mention here the narration of the facts reveal that the Appellant before the filing of the writ petition had taken a specific stand before the Respondents therein that Rule 22 was not complied with and that he was not afforded any opportunity of cross examining the witnesses. He had also taken a category stand before the authorities that he did not affix his signature in the format prepared in course of the proceeding under Rule 22. This -court in the above factual background concluded that there was a contravention of Rule 22 of the Army Rules, 1954, following which the order initiating the General Court Martial was also quashed.

14. The decisions cited by the learned Counsel for the Respondents on the other hand are for the purpose of underlining the point that procedural defects unless substantial resulting in prejudice to person concerned would not vitiate the related proceeding.

In *Major G.S. Sodhi v. Union of India*(supra), the validity of a Court Martial proceeding was challenged inter alia on the ground that the procedure prescribed by Rule 22 to 25 of the Army Rules, 1954 was not adhered to. While negating the contention in that regard in the facts of the case, the Apex Court held that a procedure is meant to further the ends of justice and not to frustrate the same

and that not each and every kind of defect proceeding the trial would affect the trial as such. It is only if there is any violation of mandatory Rules or that the non-compliance had caused any prejudice to the delinquent officer that the necessary benefit can be given to him.

15. The grievance in *Major General Inderjit Kumar v. Union of India and Ors.* (supra), inter alia was that in the course of the enquiry preceding, the General Court Martial, he was not granted an adequate opportunity of defending himself. The trial of the General Court-Martial, under the Army Act, 1950 was thus questioned. On the contextual facts, the Apex Court rejected the contention of the Petitioner and with reference to its earlier observations made in *Major G.S. Sodhi v. Union of India*(supra) held that principles of natural justice are not attracted to a proceeding of a court of enquiry which is in the nature of a preliminary enquiry.

In *Union of India and Ors. v. Major A. Hussain*(supra), a similar grievance with regard to non compliance of Rule 22, 23 and 24 of the Army Rules 1954 was registered. In the facts of the case, the Apex Court while concluding that there was no non compliance of the aforementioned provisions of the Rules recalled its observation in the case of *Major G.S. Sodhi v. Union of India*(supra) that the procedural defects unless vital and substantial did not affect the trial. While dealing with the scope of judicial review by the High Court under Article 226 of the Constitution with regard to the Court Martial proceeding, it further held that if a Court Martial is properly convened and there is no challenge to its composition and if the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. It further ruled that if there was sufficient evidence to sustain the conviction; it was not necessary to examine if pre trial investigation was adequate or not. Requirement of proper and adequate investigation was not jurisdictional and any violation thereof would not invalidate the court martial unless it is shown that the person charged had been prejudiced or a mandatory provision has been violated, it observed.

16. The essence of the judicial dicta as can be deciphered from the host of authorities referred to above is that any and every defect in a proceeding would not render the same invalid and stillborn. It is only if such a defect amounts to contravention of a mandatory statutory provision or denial of vital procedural safeguards resulting in prejudice to the person facing the proceedings for which he is likely to be visited with adverse consequences that the same becomes fatal for the proceeding, This is more so, if the defect complained of is in a proceeding pertaining to pre-trial investigation whereafter the person is charged, he would have further adequate opportunity of defending himself against the charge on merits. This however, cannot be construed to signify that if vital procedural safeguards to ensure effective and meaningful opportunity to the person concerned is denied due to a casual and indifferent approach thereto by the concerned authorities thereby resulting in violation of any mandatory provision

and serious prejudice to him, that such a defect in procedure can be glossed over. Procedural safeguards are provided to afford reasonable opportunities to a person faced with possible adverse consequences so that he may properly defend himself against the same. Such a right cannot be permitted to be whittled down casually. At the same time interference is not called for if the defect complained, of is trivial in nature and does not render the procedural safeguards wholly illusory.

17. Are the contentions raised on behalf of the Appellant sustainable in the touchstone of the provisions of the Act and the Rules as well as the statements of law enunciated herein above. So far as the grievance with regard to the Rule 40 of the Rule is concerned i.e. the Appellant was not informed in writing about the particulars of the charges against him at the time of his arrest, we find that the Respondents in their counter have taken a categorical stand that when the Appellant/writ Petitioner was placed under arrest, an administrative order was published under Rule 40 of the Rules informing him that he had been placed under close arrest and suspension with effect from 11.5.93 and that a criminal offence was under investigation against him. They also asserted therein that on receiving the information about the incident, the officiating Commandant of the Unit of the Appellant/writ Petitioner issued instructions to the Coy Commandant to disarm him and to put him under guard. The statements have remained uncontroverted. Apart from the fact that there is always a presumption of validity of the official acts it has to be noticed that no grievance with regard to non-compliance of Rule 40 was raised by the Appellant/writ Petitioner at any stage prior to the filing of the writ petition. We have carefully examined the records produced and we find that no such complaint was made by the Appellant/writ Petitioner either before the Commandant or in course of the recording of evidence or the trial before the General Security Force Court. In view of the above, we are not inclined to accept the contention of the learned Counsel for the Appellant in this regard. The learned Single Judge while negating this contention had also inter alia noticed the above stand of the Respondents in this regard and rightly so.

18. Now the allegation of non-compliance of Rule 45. Whereas the Appellant/writ Petitioner has asserted that the charge was not heard by the Commandant in his presence and that no witness was examined in support of the charge and further that no opportunity was granted to him to cross examine them or to make his statement of defence, the Respondents have maintained that Rule 45 had been duly complied with. Before referring to the records produced on behalf of the Respondents, we may again observe that no such complain was made by the Appellant/ writ Petitioner at any point of time before approaching this Court. There is no whisper of such grievance in the representation that he had filed after the confirmation of the finding and sentence. From the records it transpires that on 13.5.93 the Appellant/writ Petitioner was produced before the Command and the charge against him was read out and explained. Five witnesses were heard by the Commandant in support of the charge and the Appellant/writ

Petitioner was granted opportunity to cross examine them which he declined. The statements of the witnesses, however, were not recorded. The Appellant/ writ Petitioner was also informed of his right to make a statement in his defence. He however, declined to make any such statement. The Commandant thereafter directed recording of evidence. The officiating Commandant also made an endorsement in the record of the above proceeding that the " requirements of Rule 45 have been complied with. On a scrutiny of the records we don't feel persuaded to concur with the contention of the learned Counsel for the Appellant. We are of the view that Rule 45 of the Rules had been complied with and there is no room for the Appellant/writ Petitioner to contend to the contrary. True it is, that the signature of the Appellant/writ Petitioner does not appear in the record of the proceeding under Rule 45, but having regard to the fact that no specific plea in this regard or for that matter with regard to the non-compliance of Rule 45 had been taken by the Appellant/writ Petitioner before the Respondents before filing the writ petition, we are not inclined to hold that Rule 45 had been contravened in the instant case. We may add at this stage that the facts as obtained in HAV/CLK Amarjit Singhv. Chief of the Army Staff, Army Head Quarters New Delhi and Ors.(supra) where this Court had held Rule 22 of the Army Rules, 1954 had not been complied inter alia on the ground that the related format did not contain the signature of the Appellant are distinguishable from the case in hand, inasmuch as, the grievance with regard to the said noncompliance was specifically taken by the Appellant before the Respondent-authorities. That is not the case here and therefore merely on the consideration that the signature of the Appellant/writ Petitioner does not appear in the record of the proceedings of Rule 45 it cannot be held that Rule 45 was not complied with, more particularly in face of the contemporaneous records which proclaim otherwise.

19. The grievance with regard to the manner in which the representation of the Appellant/writ Petitioner was disposed of need not detain us. A perusal of the relevant records clearly indicate that on receipt of the representation, detailed parawise comments were furnished and all relevant facts were submitted before the appropriate authority. The said authority, as the record reveals, had duly considered the representation vis-a-vis the comments and other materials on record and had come to the conclusion that the points raised in the representation were not sustainable and hence the same was rejected. The decision was communicated to the Appellant/writ Petitioner by letter dated 9.12.96. In that view of the matter we cannot uphold the contention raised on behalf of the Appellant/writ Petitioner that his representation was rejected mechanically without any application of mind.

20. Mr. Khetri, in course of his arguments had complained about the delay in between recording of evidence in the year, 1993 and the commencement of trial in the year, 1995 contending that in absence of any explanation, therefore, the impugned action of the Respondents is liable to be declared illegal, null and void on this count alone. He also referred to Sections 58 and 59 in this context. This

grievance again was not registered before the authorities earlier. As a matter of fact, no such allegation has been made in the writ petition as well and consequently the Respondents did not have any opportunity of countering this allegation. Though Section 58 and 59 prescribe a time limit for detention in custody of a person charged with an offence, the same do not mandate that a contravention thereof under all circumstances would vitiate the process initiated against him with such an incurable illegality that it would be rendered void and invalid for all purposes. Moreover, as observed above, in absence of any pleading in the writ petition to this effect, we are not inclined to entertain this plea at this belated stage. This contention, therefore, fails.

21. This takes us to the last leg of the submission of Mr. Khetri, namely, that the charge against the Appellant/writ Petitioner was not proved or in the alternative that considering the evidence on record, the Appellant/writ Petitioner could at best be held guilty u/s 304(A) of the IPC.

This Court in exercise of its power of judicial review under Article 226 of the Constitution of India is not sitting in appeal on questions as well as findings of fact. This Court is, therefore, not called upon to embark upon a fresh appreciation of evidence and reach its own conclusions on the sufficiency of evidence or the correctness of the findings which are based on some evidence. It is only when either there is no evidence to support a finding i.e. if the finding is on the face of the record perverse or a finding is vitiated by a patent illegality or some procedural irregularity or in absolute defiance of logic that a judicial review thereof is permissible. If a view taken on the basis of some evidence is plausible one, this Court under Article 226 of the Constitution would not substitute its view on a reassessment of the evidence on the ground that the view which it seeks to take is a better one. No re-appraisal of the evidence by a writ court is warranted with a view to dislodge findings of facts recorded by a Sub-ordinate Tribunal or Court if the same can be traced to some evidence on record. Unless the findings are based "no evidence" or are otherwise perverse which no man reasonably instructed in law can arrive at, no interference is called for.

22. Notwithstanding the above, we have gone through the evidence adduced in support of the charge in course of the trial before the "Court". P.W. 1 Constable Thangzluan, P.W. 2 Constable B. Ramchander and P.W. 3 N.K. Jamail Singh are the eye witnesses of the incident who have categorically stated that they had seen the Appellant/ writ Petitioner fire at the deceased L/NK B.L. Reang from a rifle. P.W. 1 and P.W. 3 deposed that the Appellant/writ Petitioner had fired 6/7 shots at the deceased. P.W. 7 Dr. A.B. Das is the medical officer who had examined the injured after the incident. He stated that the injured suffered from multiple bullet injuries covering neck, chest, hip and thigh and that the cause of death was cardio respiratory failure due to multiple gun shot injuries P.W. 17 Dr. Abdul Rashid conducted the post Mortem Examination. He also found multiple gun shot injuries over various parts of the body of the deceased leading to severe injuries to vital organs, like heart, stomach etc. According to him, the

deceased died of respiratory arrest following such injuries.

The evidence of these witnesses has remained unshaken in cross examination. In view of above, the finding of the "Court" that the Appellant/writ Petitioner was guilty for having committed in civil offence i.e. murder u/s 302 IPC and the sentence imposed on him cannot be faulted with.

23. We have carefully scrutinised the relevant records vis-a-vis relevant provisions of the Act and the Rules and we are satisfied that the process of investigation and trial by the Court do not suffer from any contravention thereof. We feel it apposite to conclude the narration by referring to a decision to the Apex Court which deals with scope and ambit of the jurisdiction under Article 226 of the Constitution of India in matters relating to Court Martial proceedings which are akin to the proceeding of a court under the Act. The relevant excerpt of the decision rendered in Union of India and Others Vs. Himmat Singh Chahar, is quoted hereinbelow:

It is of course true that notwithstanding the finality attached to the orders of the competent authority in the court-martial proceedings the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose of finding out whether 1) there has been infraction of any mandatory provisions of the Act prescribed in procedure which has caused gross miscarriage of justice or for (2) finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceeding or that 3) the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a power of an appellate authority permitting the High Court to reappraise the evidence and being coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the competent authority in court martial proceedings. At any rate it cannot be higher than the jurisdiction of the High Court exercise under Article 227 against an order of an inferior tribunal.

24. In the light of the above discussion and the findings recorded, we are of the considered view that the Appellant/writ Petitioner has failed to make out a case warranting interference with the judgment and order of the learned Single Judge. The learned Single Judge correctly addressed himself to all relevant aspects of the case and we find no sufficient reason to differ from the conclusions recorded by him. The appeal is thus devoid of merit and is accordingly dismissed.

In the facts and circumstances of the case there would be no order as to costs.