

(1985) 04 DEL CK 0021

In the Delhi High Court

Case No : Letters Patent Appeal No. 236 of 1980

Capt. Ram Kumar

APPELLANT

Vs

Chief of the Army Staff

RESPONDENT

Date of Decision : 19-04-1985

Acts Referred:

Army Act, 1950 — Section 101(2), 130, 130(1), 130(2)
Army Rules, 1954 — Rule 39, 39(2), 40(1), 44
Constitution of India, 1950 — Article 226
First Charge Army Act — Section 45
Fourth Charge Army Act — Section 39
Second Charge Army Act — Section 39
Third Charge Army Act — Section 39

Citation : AIR 1985 Delhi 374 : (1985) 1 ILR Delhi 815

Hon'ble Judges : T.P.S Chawla, J;J.D. Jain, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Vijaya Rao, for the Respondent

Final Decision : Dismissed

Judgement

T.P.S. Chawla, J.—Capt. Ram Kumar, the appellant, was court-martialled and dismissed from the Indian Army. He filed a petition under Article 226 of the Constitution to have that order quashed, and obtain reinstatement. By a judgment dt 11th Mar. 1980, his petition was dismissed by a single Judge of this Court. This is an appeal under Clause 10 of the Letters Patent, against that judgment.

2. At the material time, Capt. Ram Kumar was attached to the 5/3 Gurkha Rifles. In 1975, this unit was at Field in the vicinity of Nasirabad. The Commanding Officer of this unit was Lt. Col V. Badhwar. During April, June and July 1976, a number of summaries of evidence were recorded in respect of certain offences alleged to have been committed by Capt. Ram Kumar. On 27th Sept 1976, he was put under close arrest in anticipation of trial by court martial.

3. By an order dt. 19th Oct. 1976, Maj. Gen S.S. Brar, Genera! Officer

Commanding 12 Infantry Division, convened a General Court Martial to try Capt. Ram Kumar on four charges. The charges on which he was arraigned were as follows:

(a) First Charge Army Act Section 45. Behaving in a manner unbecoming the position and the character expected of him in that he, at Field, on or about 31 Mar. 76, submitted his Annual Confidential Report Form (IAFI-1123-B-II), for the year 1975 along with Medical Examination Report purporting to have been signed by the RMO, 5/3 GR, which he knew or had reason to believe had not been signed by the said RMO.

(b) Second Charge Army Act Section 39(b). Without sufficient cause overstaying leave granted to him in that he, at Field, having been granted leave of "absence from 25 Apr. 76 to 4 May 76, failed without sufficient cause to rejoin at Field on the expiry of the said leave.

(c) Third Charge Army Act Section 39(a).

Absenting himself without leave in that he, at Field on 24 June 76, absented himself without leave from 0600 hrs to 1330 hrs.

(d) Fourth Charge Army Act Section 39(a).

Absenting himself without leave in that he, at Field on 28 June 76, absented himself without leave from 0600 hrs to 1330 hrs.

4. The General Court Martial comprised five members:

- (1) Brig. Faridoon Noshir Bilimoria
- (2) Lt. Col Manmohan Singh Rai
- (3) Major Narendra Kumar Tewari
- (4) Major Gurbachan Singh, and
- (5) Major Sarabjit Singh Dhillon.

There were also two waiting members:

- (1) Major Bal Krishan Jain, and
- (2) Major Ajay Kumar Ray.

The Judge Advocate was Major V.N. Mandloi

5. The General Court Martial commenced its proceedings on 26th Oct 1976. On 23rd Nov. 1976, it found Capt. Ram Kumar guilty of the first three charges, but not of the fourth. Thereafter, the record of his previous convictions was tendered in evidence. It showed that Capt Ram Kumar had been court-martialled three times earlier. On each occasion he had been found guilty and sentenced. The officer defending Capt Ram Kumar then handed in a statement in mitigation, which was read After deliberation, the court sentenced Capt Ram Kumar to be

dismissed from service". It was announced that the findings and the sentence were both subject to confirmation. By a minute dated 16th Mar. 1977, General T. N. Raina, Chief of the Army Staff, confirmed the findings and sentence of the court.

6. It is elementary that under Article 226 of the Constitution, the High Court does not review the findings of a tribunal, in this case the General Court Martial, as if it were hearing an appeal. To justify interference by the High Court it has to be shown that the findings of the tribunal are vitiated by an error of law, or the tribunal lacked jurisdiction to deal with the matter, or violated a rule of natural justice or something of that kind. Therefore, before the single Judge, the case on behalf of Capt Ram Kumar was canvassed on one ground alone. It was urged that the General Court Martial was not properly constituted because two of its members, Brig. Bilimoria and Major Dhillon, were disqualified to be judges as they "were prejudiced against the petitioner and had a personal interest in the case. The Judge rejected this contention. In appeal, Capt Ram Kumar, who argued in person, has agitated the very same point. All his grounds of appeal are merely an elaboration of that contention.

7. In a proceeding before a court martial, the accused is given the right to object to being tried by an officer sitting on the court. It is called a "challenge. The procedure is set out in Section 130 of the Army Act 1950, which reads as follows:

130. Challenges.- (1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the Court shall in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer subject to the same right of the accused to object

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

8. Further details of the procedure to be followed are stated in Rule 44 of the Army Rules 1954. The main part of that rule is merely a repetition of Section 130(1) of the Act. Put, there is a proviso comprising six clauses. Of these, only the first three are relevant for the present purpose. They are as follows:

Provided that-

(a) the accused shall state the names of all the officers Constituting the court in respect of whom he has objection, before any objection is disposed of;

(b) the accused may call any person to give evidence in support of his objection and such person may be questioned by the accused and by the court;

(c) if more than one officer is objected of, the objection to each officer shall be disposed of separately, and the objection in respect of the officers of the lowest in rank shall be disposed of first; and on an objection to an officer, the remaining officers of the court shall, in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers;"

9. Before advertng to the facts of the case, one other rule needs to be noticed. Rule 39 of the Army Rules deals with the Ineligibility to disqualification of officers" for serving on a court martial. Sub-rule (2) disqualifies an officer who "has a personal interest in the case. I think it is unnecessary to dwell on the question whether "personal interest" in that context will include the case of an officer who is biased or prejudiced against the accused. Even if that description is not apt for such a case, an officer who is biased or prejudiced against the accused would have to be treated as disqualified from sitting on the court martial on principles of natural justice. I proceed on that basis.

10. As I have said, Capt. Ram Kumar objected to two members of the court: Brig. Bilimoria and Major Sarabjit Singh Dhillon. Since the latter was the junior of the two, the challenge against him was taken up first. When asked what was his objection to Major Sarabjit Singh Dhillon, the appellant said:

...the officer has a personal interest in the case under the provisions of AR 39(e). Since Brig Y.S. Tomar Comdr 322 Inf Bde is taking very keen interest in my case being the personal friend of Lt. Col V. Badhwar who is a party in the case. Since Maj. Dhillon Sarabjit Singh is from the Regt of Brig Y.S. Tomar and serving under his command in 330 Inf. Bde, Brig Y.S. Tomar has access to this officer being under his command. I sincerely submit to the court from justice point of view that Maj. Dhillon Sarabjit Singh should not be the member of my court under the circumstances explained above for which I shall be grateful.

Thereafter, on an inquiry from the court, Capt Ram Kumar said that he had "no witnesses to produce".

11. In reply to the objection, Major Dhillon submitted:

...that as far as he is concerned, he has no personal interest in the case. Till today neither Brig. Y.S. Tomar nor Lt. Col V. Badhwar have mentioned anything to me relating to the case. I am not in the least prejudiced and will do my best to see that justice is done.

Capt Ram Kumar made no further submission.

12. The Judge Advocate then advised the court as to the law. He read Section

130 of the Army Act and Rule 44 of the Army Rules. He also read and explained Army Rules 39(2), 40(1) and Notes to Iaar 34 and note B (2) to Iaar 29. He told the court that "in a doubtful case an objection should always be allowed", because "it is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

13. Major Dhillon then retired, and the court was closed to enable the remaining members to consider the objection. After reaching a conclusion, the court was opened, and it was announced that the objection was disallowed.

14. Capt. Ram Kumar contends that his objection ought to have been upheld, and Major Dhillon should not have sat as a member of the court. I do not accept that contention. It was not even suggested that there was any misdirection in the advice given by the Judge Advocate to the court. He put the case in favour of Capt. Ram Kumar at the highest. He said, that "in a doubtful case an objection should always be allowed", and that it is very important that the court should not only be impartial but be believed by the accused and his comrades to be so". Thereafter, the decision was that of the court. No reasons for the decision were given, as a court martial never makes a speaking order. Thus, there is no error patent on the face of the record which would justify interference by this Court.

15. However, even if, contrary to what I have earlier said, one were to review the matter on merits, it seems to me, that the decision of the court martial was perfectly correct. The allegation of Capt. Ram Kumar was that his commanding officer, Lt. Col. V. Badhwar, was his "dead enemy"--an odd phrase which he uses liberally at every stage and on every occasion, and, by which, presumably, he means "deadly enemy". According to him, Brig. Tomar was the personal friend" of Lt. Col. Badhwar, and was "taking a very keen interest in the case. And, since Major Dhillon was "from the regiment of Brig. Y.S. Tomar and serving under his command in 330 Inf Bde" Brig. Tomar would be able to induce Major Dhillon to decide the case against Capt. Ram Kumar.

16. It will be observed that, in his reply, Major Dhillon categorically stated that neither Brig. Tomar nor Lt. Col Badhwar had ever mentioned to him "anything relating to the case". No reason was suggested why Major Dhillon should be disbelieved. Thus, there was no foundation in fact for any such apprehension as Capt. Ram Kumar expressed.

17. In any case, there were a number of presumptions made by Capt. Ram Kumar in objecting to Major Dhillon. First, that Lt. Col Badhwar was inimical to Capt. Ram Kumar second, that Lt Col Badhwar could influence Brig Tomar, an officer senior to him, to adopt a like view against Capt. Ram Kumar. Third, that Brig, Tomar would use his official position to influence Major Dhillon against Capt Ram Kumar. Fourth, that Major Dhillon would violate his oath and convict Capt Ram Kumar simply to ingratiate himself with Brig. Tomar.

18. It is true that Capt. Ram Kumar had made some complaints against Lt. Col. Badhwar before the proceedings of the court martial commenced. But they were

made only after the summaries of evidence had been recorded, and Lt. Col. Badhwar had incurred the wrath of Capt. Ram Kumar. And, they were hardly of a kind which would make Lt, Col. Badhwar the "dead enemy" of Capt Ram Kumar. Nevertheless, even if it be accepted that Lt Col. Badhwar was inimical to Capt Ram Kumar, there is still no ground whatsoever for making the remaining three presumptions.

19. It is true that Brig. Tomar directed Lt Col Badhwar to put Capt Ram Kumar under close arrest This is apparent from a letter dt 27th Sept 1976 written by Brig. Tomar of which a copy is annexed to the petition. But, the letter shows that there were cogent reasons to apprehend that Capt Ram Kumar may abscond and not be available for trial before the General Court Martial and that is why he was put under close arrest The power to order the arrest of a person charged with an, offence, is vested in "any superior officer" by Section 101(2) of the Army Act. There is nothing to indicate that Brig. Tomar ordered the arrest of Capt Ram Kumar because of any bias or prejudice or ulterior motive.

20. No doubt it is a fundamental principle that justice must not only be done, but should "manifestly and undoubtedly" be seen to be done. Hence, the "person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter: see Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . The accused should have no "apprehension" that justice will not be done to him by the court before which he is arraigned. But, the apprehension must be "reasonable": see Manak Lal Vs. Dr. Prem Chand, . There must be "a reasonable ground for assuming the possibility of a bias" which is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. And, the question is always one "of fact to be decided in each case: ibid. It must be proved that there is "a real likelihood of bias" or that a "reasonable person under the circumstances of the case will think that the Judge is biased": see Sankal Chand Himatlal Sheth v. Union of India (1977) 1 SLR 784 (845). A mere "suspicion of bias" or a "surmise or conjecture" would not be enough: see Kanhayalal v. Municipal Board, Rajaldesar (1980) 1 SLR 75 (78) (Raj) and S. Parthasarathi Vs. State of Andhra Pradesh, .

21. Applying these tests here, I think, the other members of the court rightly came to the conclusion that Major Dhillon was not biased, and, consequently, was not disqualified from being a member of the court. As I have tried to show, the objection of Capt. Ram Kumar involved, at least, three presumptions for which there was no warrant. Therefore, his objection amounted to nothing more than a mere conjecture or suspicion.

22. I turn then to the challenge to Brig. Bilimoria. This gentleman had to come from Bikaner to Nasirabad to sit as a member of the court, martial The objection to him is recorded in the proceedings as follows:

the accused submits that since Comdr. 322 Inf Bde is a course mate and a

personal friend of Lt Col. V. Badhwar OC 5/3 GR who is a party in the case should not be the Presiding Officer for this trial He has personal interest, in the case. On his arrival on 24 Oct 76 in the evening Lt Col V Badhwar and Brig Y.S. Tomar Comdr 330 Inf Bde arranged a special and lavish drinks party in the Officers" Mess 15 Mahar. The special waiters and drinks were arranged by Lt Col V. Badhwar with the collaboration of Brig Y S Tomar Comdr. 330 Inf Bde. I also submit that Maj VN Mandolin Dajag Hq Southern Command appointed as Judge Advocate was invited to this lavish party organised by Lt Col. V. Badhar OC 5/3 GR. Since the Inf Bde Officers" Mess was being run by 15 Mahar and if there was any necessity of such party being given to Brig FN Bilimoria and Maj VN Mandloi it should have been arranged by the station mess which is being run at present by 15 Mahar and not by 5/3 GR.

The prosecution witnesses were especially invited to the party. I hereby quote an example of Capt Subhash Chandra who was on escort duty on me from 0800 hrs on 24 Oct 76 to 0800 hrs on 25 Oct 76. This officer left the "escort duty without being relieved to attend this lavish party in the Officers" Mess 15 Mahar, and never returned for duty till 0800 hrs 25 Oct. 76. I further state that the following officers were seen in the party on 24 Oct. 76.

Brig Y S Tomar Commdr 330 Inf Bde Brig F N Bilimoria Commdr 322 Inf Bde Lt Col V Badhwar OC5/3GR Maj Mehta Surgical Specialist Capt Subhash Chandra and few officers from 5/3 GR.

The officers who were dining in members of the mess have seen the above mentioned officers attending the party organised by OC 5/3 GR.

Capt Ranbir Singh 12 Grenadiers Capt Kuljit Singh 15 Mahar Capt Mahesh Chandra 15 Mahar Lieut Koshal 15 Mahar Considering the above, I sincerely submit in the larger interest of justice that Brig F N Bilimoria Comdr 322 Inf Bde should not be the presiding officer of this GCM".

23. In support of his objection, Capt Ram Kumar produced three witnesses: Capt, Ranbir Singh 12 Grenadiers, Capt Kuljit Singh 15 Mahar and 2/Lt M.S. Koshal 15 Mahar, All three of these witnesses averred that they saw a dinner party in progress in the officers" mess on the evening of 24th Oct 1976. They said that Brig Bilimoria and his wife, and the Judge Advocate, attended this party. A prosecution witness, Capt. Subhash Chandra, and his wife, were also there. So were Lt. Col. V. Badhwar and Brig. Y.S. Tomar. It does not emerge from the evidence of these witnesses as to who was the host and in whose honour, if at all the party was being held. But, it is clear that it was a private party. These witnesses were neither cross-examined by the prosecutor nor put any questions by the court.

24. Thereafter, Brig. Bilimoria replied to the objection as follows:

Having been detailed as Presiding Officer of GCM by GOC 12 Inf Div, I arrived from Bikaner to Nasirabad by road on 24 Oct. 76 at about 1930 hrs not really

knowing as to where I was going to stay. About 2 miles short of Nasirabad I stopped my vehicle to ask a sentry as to where 330 Inf Bde was. He obviously was expecting my vehicle as on mentioning my name he directed me to 15 Mahar Officers" Mess. I reached the mess at about 1940 hrs. I was going to change and have my dinner in the mess when Lt Col V. Badhwar and a couple of other officers requested me to join them for dinner as the dinner was being held at the same place where I was going to eat. Accordingly at 2015 hrs I went to the mess to have my dinner. There were a few guests including ladies. We had a simple and unostentatious dinner. I had received no previous invitation to this private party prior to my arrival at Nasirabad. I would also like to state that Lt Col. V. Badhwar is in no way a very good friend of mine but he happens to be known to me and a friend of mine like all other friends. We were in the academy as cadet course mates way back in 1953. For the past 22 years I have never met Lt Col. V. Badhwar or even communicated with him. I have come as presiding officer totally impartial and unbiased view of the case. I have no previous knowledge of the case or have discussed any aspect with any one. I am duty bound to carry out my task as presiding officer in an absolute impartial manner. I have no personal interest in the case whatsoever. Brig YS Tomar was present at the party. There were about 8-10 members in the party.

25. The defending officer and the prosecutor then made their respective submissions. The Judge Advocate summed up the legal position as before. He said to the members of the court:

In view of the law explained by me, if you consider that the party was given to influence him (Brig Bilimoria) and that he had a personal interest in the case being known to Lt Col V. Badhwar, then you may allow the objection raised by the defence otherwise disallow the same.

Brig. Bilimoria then retired from the court and the remaining members considered the objection. The objection was disallowed The court martial then proceeded to try Capt. Ram Kumar for the charges against him.

26. There cannot be any doubt that, when Brig. Bilimoria and his wife arrived at the Officers" mess, a private dinner party was being held. There is, also, no doubt that Lt. Col. Badhwar, and some other officers, requested Brig. Bilimoria and his wife to join the party. These facts are admitted by Brig. Bilimoria himself. It is, also proven that the Judge Advocate attended the party. So did Capt Subhash Chandra and his wife. Brig. Tomar also came, though, perhaps somewhat late Who were the other members of the party, does not appear from the record As I have said it is not known who was the host and who the chief guest, if any. On these facts, the question is whether a reasonable person could entertain the apprehension, expressed by Capt. Ram Kumar, that Brig. Bilimoria would not act fairly in the impending court martial proceedings. The other members of the court martial overruled the objection. Again, there was no flaw. in the advice given by the Judge Advocate to the court Thus, there is no reason for interference by this Court.

27. But, as before, I will review the matter on merits. The view taken by the court, on the challenge to Brig. Bilimoria, must obviously have been influenced by their familiarity with the notions of etiquette prevalent in the Army. The prosecutor said that it was "an army tradition" that, if a party was being held, a visiting senior service officer should be invited to it. Whether there be such a tradition or not, it is certainly a courtesy which any officer would show to a senior officer who happens to come from outstation; especially, when the senior officer is residing in the very place where the party is being held and who would probably have to come to the same dining room for his dinner. From the mere fact that Brig. Bilimoria was requested to join the dinner party already being held I do not think any sinister inference can be drawn.

28. Likewise, the same courtesy must have been shown to the Judge Advocate, who would have come from outstation specially for the court martial. Capt. Subhash Chandra, although a prosecution witness, may have been invited to the party on account of being a friend of the host, whoever he was. In any case, neither of these two persons really mattered because they were not to sit as judges in the case against Capt. Ram Kumar.

29. None of the witnesses produced by Capt Ram Kumar said that they overheard any conversation between any of the persons attending the party. Therefore, there is nothing to indicate that the case against Capt Ram Kumar was even mentioned on that occasion. Furthermore, Brig. Bilimoria was an officer senior to all the other officers present at the party, except Brig. Tomar who held the same (rank. It is not credible that any officer holding an equal or lower rank could have exercised such great influence on Brig. Bilimoria as to deflect him from acting in accordance with his conscience in the case against Capt. Ram Kumar. In my opinion, the apprehension of Capt. Ram Kumar was totally unreasonable.

30. It is worth observing that Capt. Ram Kumar made no allegation of any kind against the other three members of the court. It is not suggested that Lt. Col. Badhwar and Brig. Tomar made any effort to influence them. Yet, the three of them constituted the majority, and unless they were also influenced, a decision against Capt. Ram Kumar was not assured. They do not appear to have been even invited to the dinner party.

31. The credibility of Brig. Bilimoria was impeached by drawing attention to his statement that he had come to Nasirabad "not really knowing as to where he was going to stay. It was argued by the defending officer before the court martial that "It is unlikely that a senior officer like Brig. F. N. Bilimoria would have come to an outstation without making arrangements for his stay in the station." Capt. Ram Kumar said the same thing here. I think, the argument is based on a misunderstanding of what Brig. Bilimoria meant.

32. It is obvious that when a senior officer is coming from outstation for presiding over a court martial, the local authorities are bound to make

arrangements for his stay. Brig. Bilimoria would have naturally assumed that some arrangements in accordance with his status would be made. Therefore, before leaving Bikaner, he would not have thought it necessary to inquire as to where he would be staying. The matter would have been taken for granted not only by him, but, also, by the authorities responsible for making the arrangements on the receiving side. Therefore, Brig. Bilimoria did not utter any untruth when he said that he arrived "not really knowing" where he was going to stay. Considering that Nasirabad is a Field area, probably the only place at which suitable arrangements could be made for the stay of Brig. Bilimoria was the officers' mess. It seems to me that too much is being made of nothing at all.

33. Again, the posting of a sentry two miles outside Nasirabad to receive and direct the flag car in which Brig. Bilimoria was expected to come, was a normal courtesy, which anyone would extend even to a stranger coming to unknown territory. No reasonable person could possibly think that so small a courtesy was intended to influence Brig. Bilimoria against "Capt. Ram Kumar.

34. Brig. Bilimoria admitted that he and Lt. Col. Badhwar were in the Indian Military Academy as "cadet course mates way back in 1953. But, he said, that for the past 22 years he had never met Lt. Col V. Badhwar and had not even communicated with him. He denied that Col. Badhwar was "a very good friend" and described it merely as an ordinary friendship. There is no reason to disbelieve Brig. Bilimoria on this or any other matter. He, seems to have stated the facts in a forthright manner and as accurately as he could. The mere fact that he and Lt. Col Badhwar were cadet coursemates 22 years ago, could not reasonably lead anyone to infer that he would act according to Lt Col Badhwar's bidding in a matter so serious as a court martial and when he himself held a higher rank. Therefore,, 1 do not think there was any substance in the objection raised by Capt. Ram Kumar to Brig Bilimoria being a member of the court martial.

35. In the course of the hearing before us, Capt. Ram Kumar raised two new points. They were not raised at any earlier stage, nor even in the grounds of appeal. Nevertheless, we have considered them. There is no substance in either.

36. The first point he raised was that, since he had objected to two members of the court martial one of them could not participate in the decision on the objection to the other. In other words, both should have been excluded altogether from ruling on his challenges. It is clearly stated in Section 130(2) of the Army Act that an objection against one officer shall be decided by "the remaining officers of the court" in the "absence of the challenged officer". The position is made even more clear by Clause (c) of the proviso to Rule 44 of the Army Rules which says that "the remaining officers of the court" shall "in the absence of the challenged officer", vote on the disposal of the objection "notwithstanding that objections have also been made to any of those officers. There is great sense in these provisions, because otherwise an accused by merely objecting to all the officers Constituting the court could completely dislodge the court. That shows the absurd result which would follow if the

procedure Suggested by Capt. Ram Kumar were to be adopted.

37. The other new point raised by Capt. Ram Kumar was that Rule 40(1) of the Army Rules had been violated. This sub-rule reads as follows:

40. Composition of court-martial.--(1) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusively of officers of the corps or department to which the accused belongs.

It is clear from Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , which Capt. Ram. Kumar himself cited, that the word "corps" in this sub-rule means a "battalion" in the infantry and a "regiment" in the cavalry .From the particulars of the members of the General Court Martial, given in the convening order, it can be seen that each of them was drawn from a different battalion or regiment. Therefore, there has been no violation of any part of the sub-rule.

38. In any case, the sub-rule can be departed from if the convening officer finds that it is not "practicable" to comply with it. Assuming that I am wrong, and that there has been some violation of the sub-rule, the point should, at least, have been raised in the petition so that the respondent would have had the chance to show whether compliance with the sub-rule was "practicable" or not. That is a question of fact, which cannot be allowed to be raised for the first time at the hearing of the appeal.

39. For these reasons, I think, that the single Judge was right in the view which he took, and there is no force in the appeal. Consequently, it is dismissed. However, having regard to the fact that Capt. Ram Kumar is now without a job, and according to him, in very straitened circumstances, I would make no order as to costs.

J.D. Jain, J.

40. I agree.