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**(2004) 05 AHC CK 0147**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 38024 of 1999**

Laloo Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 28-05-2004

**Acts Referred:**

Army Act, 1950 — Section 21  
Army Rules, 1954 — Rule 129, 22  
Constitution of India, 1950 — Article 22, 33

**Citation :** (2004) 3 AWC 2752

**Hon'ble Judges :** D.P. Singh, J

**Bench :** Single Bench

**Advocate :** G.D. Mukherji and Satyajit Mukherji, for the Appellant; H.C. Dubey, S.C. and B.N. Singh, S.S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.P. Singh, J.—Pleadings are complete and the counsel for the parties agree that the petition may be finally disposed of under the Rules of the Court.

2. Heard learned counsel for the parties.

3. This writ petition is directed against Summary Court Martial proceedings and also for quashing the minute-sheet dated 16.3.1999.

4. Petitioner having been enrolled in the Army was discharging the function of a Havaladar (OPR) in 129 AD Regiment when he was charge-sheeted for two offences u/s 40(c) of the Army Act, 1950. He was tried by a Summary Court Martial and was awarded the following punishment :

(a) to be reduced to the ranks ;

(b) to suffer rigorous imprisonment for three months and ten days by confinement in civil prison ; and

(c) to be dismissed from service.

Thereafter, the petitioner preferred a statutory petition u/s 164(2) before the Chief of the Army Staff which was partly allowed by the order dated 16th March, 1999 and the unexpired period of imprisonment was remitted. However, all the other punishments were left in tact.

5. Learned counsel for the petitioner has firstly urged that Rule 22 of the Army Rules, 1954 was not complied with, inasmuch as, the charges were not heard by the Commanding Officer in the presence of the accused and as such the trial was vitiated. In support of his contention, he has relied upon several decisions to show that requirement of Rule 22 was mandatory. No doubt the requirement of the Rules are mandatory but it has to be seen whether the rule was complied.

6. A statement of fact has been made in the writ petition in paragraph 6 that the charge was not heard by the Commanding Officer in the presence of the accused. This statement has been denied in paragraph 13 of the counter-affidavit. Further, along with the counter-affidavit, the record of the proceedings before the Commanding Officer has also been annexed as Annexure-3 which reflects that the hearing of the charge took place before the Commanding Officer on 20.10.1998 at 11.30 hours at Mamun Cantonment and the same has been signed by the Commanding Officer. However, counsel for the petitioner has urged that these proceedings have been drawn up subsequently and in fact there is no signature of the petitioner and also when the proceedings of the Summary Court Martial were supplied to him, the aforesaid document did not accompany it. A perusal of the said document shows that the Commanding Officer has himself certified that the petitioner refused to sign the proceedings. Neither the Commanding Officer has been arrayed as a party in person nor any specific allegation or motives have been disclosed against him. There is no specific averment in the writ petition that the said document was not part of the proceedings supplied to the petitioner. No doubt, there is an averment made in the rejoinder-affidavit, but the respondents had no occasion to reply to the same. Assuming that the document was not supplied together with the proceedings, it may be a mistake or negligence, but that would not render the Summary Court Martial proceedings invalid. The petitioner has also, not filed a copy of his petition u/s 164(2) to show that he had taken this specific ground before the Chief of the Army Staff. For all these reasons, I do not find any substance in this argument of the learned counsel for the petitioner.

7. He has then urged that Rule 129 is violative of Article 22 of the Constitution of India to the extent that it prohibits the friend of the accused to address the Court or cross-examine the witnesses. In support of his contention, he has relied upon a single Judge decision of the Punjab and Haryana High Court in the case of Joga Singh v. Union of India 1996 LIC 677. We shall deal with this case subsequently but presently the nature and the proceedings of Summary Court Martial may be examined.

8. Summary Court Martial, as the name suggests, is summary in nature where the Commanding Officer is the Court and the accused is marched before him for

the proceedings. The proceedings are not full-fledged trial as in a General or District Court Martial or in other civil criminal trial. There is neither any prosecutor nor a defending officer as in General Court Martial. The procedure are more Informal in Summary Court Martial than before the General or District Court Martial. The provision for assignment of a friend of the accused in Summary Court Martial to assist the accused is provided in Rule 129. Rule 129 reads as follows :

"129. Friend of accused.--In any summary court-martial an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the Court."

9. The Rule stipulates that the accused person, if he chooses so, may have a person to assist him during the trial, such person may be a legal practitioner but he may or may not be subject to the Army Act and may not be conversant with such summary proceedings and the army discipline. It further provides that the friend of the accused would have no individual right to address the Court or examine or cross-examine the witnesses, but he is free to advise the accused on all points and can also suggest question to be put before the witnesses, but unlike in a General Court Martial, the friend or the lawyer has no right to address the Court.

10. The learned single Judge of the Punjab and Haryana High Court In the case of Joga Singh (supra) while examining Rule 157 of the Border Security Force Rules, 1969, has held that right to be defended is guaranteed under Article 22 of the Constitution of India. In that case, the Court was examining Rule 157 which Is somewhat similar to Rule 129 of the Army Act. It is noticeable that the learned single Judge first holds "right to be defended by a counsel is not a guaranteed right" but in the very next breath it holds "that such a right is guaranteed under Article 22."

11. Article 22 ftn dS place in Part III of the Constitution of India, which deals with fundamental right. Article 33 which also finds place in Part III stipulates that Parliament may by law restrict the applicability of the right conferred under that Chapter to the members of Armed Forces and other specified Organizations. Parliament has enacted Section 21 in the Army Act, 1950, which authorised the Central Government to restrict to such extent and in such manner rights Of a person subject to the Act. The Central Government under its Rule making power u/s 191 of the Act has framed the Army Rules of 1954 and Rule 129 is referable to Section 21. The validity of a law made under Article 33 cannot be challenged on the ground of contravention of any of the fundamental rights (See Ram Sarup Vs. The Union of India (UOI) and Another, ). The Parliament instead of imposing the restrictions itself can empower the Central Government to impose the restrictions (See R. Viswan and Others Vs. Union of India (UOI) and Others, ). Applying the ratio of the two cases to Rule 129, it is apparent that no challenge

can be made to the restriction placed upon the accused denying his friend to address the Court or cross-examine the witnesses because the said alleged right of Article 22 is hedged by Article 33. Thus, In my opinion, the decision in Joga Singh's case (supra) does not lay down the correct law.

12. In view of the discussions hereinabove, this petition fails and is dismissed but no order as to costs.