

(1992) 08 DEL CK 0038

In the Delhi High Court

Case No : Criminal Writ Appeal No. 40 of 1985

Lance Dafedar Laxman

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-08-1992

Acts Referred:

Army Rules, 1954 — Rule 22

Citation : (1993) 1 Crimes 372 : (1992) 24 DRJ 125 : (1993) ILR Delhi 320

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : B.T. Singh and E.X. Joseph, for the Appellant;

Judgement

Usha Mehra, J.

(1) Lance Dafedar Laxman Singh, the petitioner has assailed the order of the General Court Martial (in short GCM) on the ground of non complying of the provision of Army Rules which are mandatory in nature. These provisions, according to the petitioner, were to be complied with by the Commanding officer , before the General Court Martial was held and since these provisions d in particular the Rule 22 having not been complied with the General Court Martial proceedings stand vitiated and consequently the sentence passed against him vide order dated 10th December, 1983 and conferment order dated 17th April, 1984 are liable to be set aside.

(2) In order to appreciate the contentions of the petitioner, the brief facts of the case are that the petitioner was posted in 1983 as Lance Dafedar at 73 Armoured Regiment at Patiala. Along with him Lance Defenders Amrik Singh and Malkiat Singh were also posted. In the first week of December 1982, one Armoured Brigade left for collective training exercise from their place of location at Patiala. The petitioner was employed as Nco in charge Canteen Store Department and his co-accused Lance Dafedar Malkiat Singh was employed as an orderly of Lt. Col. G.S. Sirohi, Commanding officer of the Regiment.

(3) Lance Dafedar Amrik Singh (the deceased) was working as an orderly with Resaldar Major Bhupinder Singh. The petitioner and his co-accused as well as the deceased, all belonged to 73 armoured regiment and were left in the rear. Malkiat Singh was residing in the servants quarter of Bungalow No.46 allotted to Lt. Col. G.S. Sirohi whereas the petitioner and the deceased Amrik Singh were occupying family quarters.

(4) On 23rd February, 1983, the petitioner and Malkiat Singh went to the house of the deceased and took him out for dinner. Harjit Singh, a civilian was also invited by the deceased who joined them at K.L.P. Guard Hut where the parties were to have their food. Guard Commander Mohd. Rafiq was also there. All the five of them had liquor. They heard punjabi songs. After finishing the get together, the petitioner, Malkiat Singh and the deceased Amrik Singh as well as Harjit Singh, the civilian, came out from the K.L.P. Guard Hut and went for Octroi post. At the Octroi post, Harjit Singh went away to his house while the rest of the three kept on going on their separate bicycles towards the Brigade officers Mess. On the way, the deceased Amrik Singh passed a derogatory remark teasingly, "Tumhen Apni Family Sath Rakhni Chahiye. Aap Chahe Mahinon Ke Bad Chhuti Jate Ho. Apki Family Gaon Man Din Be-din Ghumti Phirti Hai" (You should keep your family along with you. You go on leave after months. Your family (wife) goes right and left in the village). These remarks upset Malkiat Singh. He got enraged on these remarks Therefore, wanted to beat the deceased Amrik Singh with the help of the petitioner. It is further the case of the prosecution that Amrik Singh was going on a cycle. It was pitch dark when Lance Dafedar Malkiat Singh and the petitioner caught hold of Amrik Singh by the neck from the rear. The petitioner gagged the mouth of Amrik Singh with a handkerchief and with the other hand he held the neck of Amrik Singh from the front. Both the petitioner and Malkiat Singh kept the deceased in this position for almost 8 to 10 minutes. Amrik Singh tried to free himself by kicking the petitioner on his right leg with the result that the petitioner sustained injuries on his right shin. Amrik Singh because of this also got bruises on his left leg. He fell down on the ground. The petitioner and Malkiat Singh left that place whereas Amrik Singh collapsed on the ground. They left Amrik Singh alone. This incident took place at the Culvert near the residence of Lt. Col. G.S. Sirohi. After Amrik Singh collapsed, the petitioner and Malkiat Singh raised alarm that some civilians had killed Amrik Singh and thrown him there. They reached the unit lines and asked officiating Regimental Dafedar Major Jaspal Singh to send maximum persons at the earliest. It was later that Lady Dr.(Mrs.) Alkesh Arora carried out an autopsy on Lance Dafedar Amrik Singh and opined that the cause of death was due to intracranial brain haemorrhage. It is in this background charge of murder was leveled against the petitioner and his co-accused.

(5) Vide order date 17th May, 1983, officiating Commanding officer of the Armoured Regiment detailed Major M.S. Maan of the said unit to record the summary of evidence. On the basis of the proceedings and the summary of evidence recorded the petitioner and the co-accused were ordered to be tried

jointly for an offence u/s 69 of the Army Act.

(6) Summary of evidence proceedings were ordered on 17th May, 1983 and the proceedings were concluded by the said officer detailed to conduct the summary of evidence on 21st June, 1983. The charge upon which the petitioner and the co-accused were finally tried was drawn up on 11th October, 1983. This according to the petitioner was in violation of the rule 22 of the Army Rules.

(7) The prosecution has cited as many as 16 witnesses and recorded their statements. Petitioner was convicted and sentenced to suffer imprisonment for life and dismissal from service. On petition u/s 164(2) of the Army Act 1950 the conviction was upheld but sentence was reduced to rigorous imprisonment for five years in a civil prison vide order dated 17th April, 1984. The aforesaid findings and sentence has been assailed by Mr. B.T. Singh on the following grounds:

i) Non-compliance of mandatory provision of Rule 22 and 23 of Army Rules. ii) Non application of mind by Commanding officer. iii) Violation of the provision of Rule 22 iv) Unfair trial v) Material contradiction in the evidence ignored vi) The order for initiating disciplinary enquiry by a Superior officer thereby curtailing the power of the Commanding officer.

(8) The first point raised by Mr. B.T. Singh is regarding non-compliance of the mandatory provision. Admittedly, as per the decision of the Supreme Court in the case of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , Rules 22 to 24 of the Army Rules are mandatory in respect of every person subject to the Act other than an officer. Therefore, there can be no doubt that in the case of the petitioner who is admittedly not an officer, the provisions of Rules 22 to 24 were strictly to be complied with. Any violation of these mandatory provisions will render the proceedings invalid and any action taken on invalid proceedings is liable to render the conviction and sentence bad in law. Rule 22 reads as under:

"HEARING OF CHARGE- (1) Every charge against a person subject to the Act other than an officer , shall be heard in the presence of the accused. The accused shall have full liberty to cross examine any witness against him and to call any witnesses and make any statement in his defense. (2) The commanding officer shall dismiss a charge brought before him if, in his opinion, the evidence does not show that an offence under the Act has been committed, and may do so if, in his discretion, he is satisfied that the charge ought not to be proceeded with. (3) At the conclusion of the hearing of charge, if the commanding officer is of the opinion that the charge ought to be proceeded with, he shall without unnecessary delay: (a) dispose of the case summarily u/s 80 in accordance with the manner and form in Appendix III; or (b) refer the case to the proper superior military authority; or (c) adjourn the case for the purposes of having the evidence reduced to writing. (d) If the accused is below the rank of warrant officer , order his trial by

a summary court-martial: Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or an active service a summary general court-martial for the trial of the alleged offender unless either:-

(A) the offence is one which he can try by a summary court-martial without any reference to that officer, or (b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline. This is an important chapter dealing with the powers of the Commanding officers and investigation of charges.

(9) The principles of natural justice and the well-established rule of law and that all evidence whether for the prosecution or the accused, must be taken in the presence of the accused. This rule is imperative and is in consonance with the democratic principles. It embodies Section 353 of the Code of Criminal Procedure which regulates the trial of criminal cases." The scope of investigation which is preliminary in nature to be conducted under the Army Rule 22 has strictly to be adhered to. The word "Charge" came up for interpretation before the Division Bench of this Court in the case of Ex Sappy Rajbir Singh Vs. Union of India & Ors. in Crl.W. No.43/1985 decided on 27th May, 1988. It was pointed out that the word "charge" referred to means a simple complaint or allegation against the soldier concerned. The rules lay down a clear distinction between the "charge sheet" and the "charge". Charge has been defined in sub-rule (2) of Rule 28 under this very chapter. It reads as under:

"(2) A charge means an accusation contained in a charge sheet that a person subject to the Act has been guilty of an offence."

(10) The "charge-sheet" has to be framed after the preliminary investigation during which the statements of the witnesses and the plea of the accused are not to be recorded in writing. However, the nature of the offence has to be made known to the accused and the witnesses are to be examined in support of those allegations in his presence. The accused has also to be given full liberty to cross examine those witnesses deposing against him. The Commanding officer after holding the preliminary investigation has been given three options in sub-rule (3) of Rule 22. If the Commanding officer is satisfied then the case should proceed. He will adjourn it for purposes of having the evidence reduced in writing. The procedure for recording evidence is laid down in Army Rule 23.

(11) The alleged Commanding officer Col. C.S. Gill never heard the charge under Army Rule 22 because he was not there at the time when the alleged incident took place or when the investigation started. It is the case of the prosecution that Col. C.S. Gill was on exercise and Maj. P.P. Singh was the Commanding officer rear of the 10th unit from 5th December, 1982. He was having summary powers. Lt. Col. G.S. Sarohi became Commanding officer with effect from 14th March, 1983. Therefore, with effect from 14th March, 1983. Major P.P. Singh was no more Commanding officer. Hence all the investigation done and data

collected by Major P.P. Singh ought to have been placed before Commanding officer i.e. Lt. Col. G.S. Sarohi but nothing of this sort has been done in this case.

(12) PROSECUTION'S own case is that Major P.P. Singh was not the Commanding officer. Lt. Col. G.S. Sarohi has not been cited as a witness nor produced in the witness box. Therefore neither Major P.P. Singh nor Lt. Col. G.S. Sarohi according to prosecution were the Commanding officers. If they were not the Commanding officers, then who investigated the matter and who heard the petitioner as required under Rule 22? Col. C.S. Gill came back from the exercise only in May 1983 by which time the investigation had already been completed. As per prosecution's own case, investigation got completed in March, 1983 whereas Col. C.S. Gill, the Commanding officer was available from May, 1983. Therefore, these admitted facts which have come on record clearly indicate that the Commanding officer, Col.C.S. Gill never heard the charge under Army Rule 22. Since he did not hear the charge, Therefore, he could not have formed his opinion on any basis. The investigation done and data collected by Maj. P.P. Singh was never placed on the military file. Therefore, there was nothing on the record on the basis of which Col. C.S. Gill could form the opinion that the charge ought to be proceeded with as required under Sub Rule 3 of Army Rule 22. Hence it is a clear case of non compliance of the provision of Army Rule 22. Mr. B.T.Singh, further contended that the prosecution itself has relied upon the statement of Maj. P.P.Singh who has been examined as Public Witness .I. It is Maj. P.P.Singh who conducted the preliminary investigation which was as per rule 22. It is Maj. P.P.Singh who, appearing as Public Witness .1, has stated that having heard the above mentioned story from accused No.2, he prepared the F.I.R. and handed it over to the police. Maj. P.P.Singh appearing as Public Witness .1 has further stated that he had completed the investigation after hearing the accused and from the testimony of Public Witness .13 it has come on record that it was Maj. P.P. Singh who handed over the complaint in writing on a piece of paper at 23.45 hours and made an endorsement upon which the F.I.R. was recorded. Subsequently, when Lt. Col. G.S. Sarohi Commanding Officer of the unit was available on 15th March, 1983, it is apparent that he must have investigated the matter further. Mr. B.T. Singh, Therefore, contended that the language of Rule 22 indicates that it is only when the Commanding Officer comes to the opinion that the charge ought to be proceeded with, he shall without unnecessary delay take the action as stipulated in sub rule (3). But in this case as per Col. C.S. Gill's own affidavit, he complied with the rules on 17th May, 1983 that is three months after the date of the crime. This shows suspicious circumstance and a clear non compliance of the mandatory rules.

(13) Not only there is a non compliance of mandatory rule, but there is a violation of this rule also. Rule 22 stipulates that the decision to proceed with the case further has necessarily to be that of the Commanding Officer. It is he who has to form an opinion whether to dismiss the charge or to proceed further. But in this case the Brigade Headquarter ordered for initiation of disciplinary proceedings on 27th February, 1983. It is the Brigade Commander who sent

the .said inquiry report to the Commanding Officer for initiating the disciplinary action against the petitioner. This fact find support from the affidavit filed by Col. C.S. Gill in this Court in November, 1989. Army Rule 22 never envisaged that the higher authority should initiate the action and then pass on to the lower authority for taking action. That would amount to mandate which is not what is stipulated in this rule. The power of commanding officer in this case was usurped by the Brigade Headquarter. The Commanding Officer being

(14) Subordinate to it could not dare to disobey the order of the superior. In fact by this action of the Brigade Commander, it amounted to non application of mind of the Commanding Officer which is vocative of Rule 22. The question which will arise in view of these facts. Can a Commanding Officer disobey the order of a superior? Since the superior gave the order of initiate disciplinary action, then where was the question of referring the case to the superior for order as required under sub Rule 3 of Rule 22 of the Army Rules. In fact the Brigade Headquarter by ordering the disciplinary inquiry in February, 1983 itself has prejudged the case of the petitioner. The investigation which was completed in March, 1983 is nothing but a farce because the superior authority had already formed an opinion to indict the petitioner which is in violation of Rule 22 of the Army Rules.

(15) The third and the last limb of Mr. B.T. Singh's arguments was with regard to unfair trial. In this case as per record. According to him prosecution counsel sought adjournment in order to brief his witnesses. This to my mind is against the principle of natural justice. Moreover ,except the alleged confessional statement of the petitioner and his co-accused, there is no other evidence linking the petitioner with the offence charged. On mere confession of the accused no conviction can be based and such a confession is not admissible u/s 26 of the Evidence Act. Mr. B.T. Singh drew my attention to the proceedings held before the Court Martial on 22nd November, 1983 at page 8 which reads as under:

"AT this stage the counsel for the prosecution submits that he is not ready with his prosecution case and he wants some time to speak to his prosecution witnesses before he produces them before the court. He submits that though he has got four days at his disposal to prepare his case but he could not get time to speak to the witnesses hence he requests the Court to grant him an adjournment till the next morning. The defense counsel for the accused No. 1 submits that Maj. P.P. Singh and Capt. J.S. Sangha and other prosecution witnesses are available hence the prosecution should not ask for an adjournment and cause unnecessary delay in the proceedings but to proceed with the trial in the interest of Justice. Counsel for the prosecution submits that unless he speaks to his witnesses and confident about producing them before the court with the necessary documents required under the law, he would not be ready with his case."

(16) Reading of these paragraphs of the court martial proceedings, Mr. B.T. Singh contended, clearly shows that the prosecution counsel sought adjournment in order to tutor the witnesses and not for the purposes of collecting the document

or refreshing their mind. This procedure is against the principle of natural justice. B.T. Singh Therefore urged that this act of the prosecution is sufficient to vitiate the proceedings. It in effect amounted to unfair trial. Maj. P.P. Singh was available on 22nd November, 1983 but the counsel for the prosecution sought adjournment instead of adducing him. Counsel for prosecution after tutoring the witnesses adduced them as witnesses which is very unfair to the accused. Therefore, the conviction and sentence are liable to be set aside. So much so, the prosecution by withholding Col. C.S. Gill and Lt. Col. G.S. Sarohi has prejudiced the case of the defense. It has deprived him the opportunity to cross examine them and prove on record the fallacy in their action and also that there was no data on the basis of which Col. C.S. Gill could form an opinion on 17th May, 1983 in order to proceed with the case. In this case. Major P.P. Singh has been cited as a witness ignoring Col. C.S. Gill and Lt. Col. G.S. Sarohi. What were the circumstances which compelled the respondent not to cite them as witnesses even though they were available has remained unexplained on record. This fact further proves that additional affidavit filed by Col. C.S. Gill now in Court had been procured and has been filed in order to fill up the lacuna. This additional affidavit is an after thought and hence no reliance can be placed on the same. The provisions of Rule 22 ought to have been complied with by the then Commanding Officer who was there in the unit instead of waiting till 17th May, 1983 to be complied with by Col. C.S. Gill. This also amounted to non-compliance of Rule 22, because by 15th March, 1983, the proceeding of the Court of Inquiry along with the direction of the Brigade Commander was not available with the Commanding Officer. It is for this reason that by 15th March, 1983, the provisions of Rule 22 could not be complied with. Besides non-compliance of Rule 22, there is an inordinate long delay in formulating the direction for reducing the proceedings under Rule 22 in writing. The hearing of the charge in this case took place on 17th May, 1983, whereas the incident is of February, 1983. This shows that there was a clear disregard to the mandate given in Rule 22(3). Viewing in this background, the additional affidavit of Col. C.S. Gill creates a doubt about the bonafide of the action of the respondent.

(17) Even the convening order dated 17th May, 1983 whereby Col. C.S. Gill directed the summary of evidence shows that it was issued under Rule 22(3) (c). Reading of Sub Rule 3(c) shows that charge has to be heard without unnecessary delay. The Commanding Officer has to form his own opinion. This being a quasi judicial order, it requires that reason ought to have been given for forming the opinion as envisaged under Sub Rule 22 (3) but the convening order dated 17th May, 1983 which is reproduced as under would show that Col. C.S. Gill never applied his mind to the proceeding of inquiry and has never arrived at any decision. The said order is as under:

"1.IC-29792N Maj M.S. Maan is hereby detailed to record summary of Evidence against No. 1044523 Lance Dafedar Laxman Singh of 73 Armoured Regiment and No.1051393 Lance Dafedar Malkiat Singh of 73 Armoured Regiment who committed a civil offence under Aa Section 69 that is to say culpable homicide

not amounting to murder contrary to Sec.304 of the Indian Penal Code . by causing the death of No. 1851425 Lance Dafedar Amrik Singh of 73 Armoured Regiment at about 2130 hours on 23rd February. 1983. 2.Attention of IC-29792N Maj. M.S. Maan is drawn to pages 286 to 395 of the Manual of Indian Military Law and Army Rule 23(1), (2), (3). (4), (5) and (6). 3. IC-35473 Capt. S.K. Nayak is detailed as an independent witnesses for the above summary of evidence. 4.Manuscript copy of Summary of Evidence duly completed in all respects, and twelve typed copies of the same will be submitted to the Rhq, by 27th May, 1983."

(18) Except the convening order, no order giving reasoning to form an opinion has been placed on record whereby Col. C.S. Gill formed the opinion as required and envisaged under Army Rule 22. In the absence of any opinion, having been formed by Col. C.S. Gill, this convening order has no meaning, because that would indicate that Col. C.S. Gill never applied his mind to the proceedings of inquiry nor arrived at any decision. In a catena of judgments it has been held that non- compliance of Rule 22 vitiates the entire proceedings and in this regard Mr. B.T. Singh has also placed reliance on the decision of this Court in the case of Nb/Sub Avtar Singh, petitioner Vs. Union of India and Ors. reported in 1989 Crl. L.J.1986.

(19) On the other hand, counsel for the respondent/UOI, Mr. E. X. Joseph while rebilling the arguments contended that Col. C.S. Gill while initiating the disciplinary proceedings did comply with Army Rule 22 nor there is any violation of Rule 22. Col. C.S. Gill was the Commanding Officer of the petitioner and this will be established from the additional affidavit of Col. C.S. Gill filed on the record of this Court It is only on conclusion of the proceedings he formed the opinion and gave the order of recording the summary of evidence. In fact the investigation under Rule 22 is only a preliminary investigation and can be done orally. Neither the Army Act nor Army Rules prescribe that the investigation under Rule 22 should be in writing. It is only after the decision in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, that the army authority issued administrative instructions in the year 1984 to all the Commanding Officers to prepare a record of the proceedings in writing under Army Rule 22. In this case, the hearing of the charge took place in May, 1983 that is much prior to the administrative instructions given by the Army Authorities. Therefore, at that time it was not the requirement of law for the Commanding Officer to reduce the proceeding of investigation into writing. Maj. C.S. Gill now Col. C.S. Gill never maintained any record about those proceedings and there is no reason to disbelieve the same as it was not necessary. It is so held by our own High Court in the case of Ex. Sepoy Rajbir Singh Vs. Union of India in Crl.W.43/1986 decided on 27th May, 1988 as well as in the case of Tirlochan Joshi and others Vs. Union of India & Ors. in Crl.W. 109/1982 decided on 21st March, 1983.

(20) In fact the petitioner never raised this plea either before or during the Court

Martial Proceedings which fact is clear from the question put to him by the Gcm and his answer thereto which is reproduced as under:- Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial has not been complied with and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing any defense? At that time petitioner never raised any plea that there was a violation of Army Rule 22. It is for the first time he has raised this plea before this Court which is an after thought. Therefore relying on the decision of Ex. Sepoy Rajbir Singh (supra) this ground cannot be taken note of. Mr. Joseph further contended that Maj. P.P. Singh was not the officer commanding at the relevant time. He was to supervise the administration of the rear party in the absence of the officer commanding. The term "Officer Commanding" is defined in Army Act Section 3(V). Maj. P.P. Singh was never made to discharge the functions of the Commanding Officer. As per the Army Act Section 80 read with para 443 of the Regulations for the Army, Revised Edition 1987 some of the officers specified therein are not commanding officers. They can only exercise summary power to a limited extent. It was these summary powers which were enjoyed by Maj. P.P. Singh during the relevant time. Therefore, Maj. P.P. Singh had no power to comply with Army Rule 22. Neither Maj. P.P. Singh nor Capt. Sanga were the Commanding Officers at the relevant time. On 17th May, 1983, Maj. C.S. Gill was the officiating Commanding Officer hence he rightfully complied with the provisions of Army Rule 22. The action taken by Maj. P.P. Singh was only for the purposes of collecting the data regarding the incident so that he could report the same to the higher authorities. But that does not mean that he was the Commanding Officer and was to comply with provisions of Army Rule 22. Therefore, there is no violation of the Army Rule nor there is any non-compliance of the same. Mr. Joseph denied that there was any tutoring of the witnesses. Rather the prosecution counsel sought time in order to collect the documents so that he could scrutinise the same before adducing the witnesses. Even otherwise, some of the witnesses were not available and prosecution counsel wanted to adduce them together. No prejudice has been caused to the petitioner by taking a date on that particular day on the ground of collecting documents nor by the act of the Brigade Commander any power of the Commanding Officer had been curtailed. In fact the superior authority had only directed disciplinary action to be taken as per the Act and the Rules. This was setting the law in motion but nowhere gave any mandate that the Commanding officer has to hold him guilty or to form an opinion for recording the summary of evidence. It is in fact by the Gcm, petitioner was found guilty and this was on the basis of the evidence adduced before it.

(21) The argument of Mr. Joseph do not hold good because the Rule 22 no doubt pertains to a stage prior to trial but the decision to hold any investigation and a trial depends upon the procedure laid down under this rule. Therefore the procedure which has been held by the Supreme Court to be mandatory has to be followed in letter and in spirit. There is no Explanation rendered by Mr. Joseph

regarding the delay from February, 1983 to 17th May, 1983. Nothing has been brought on record nor stated as to why the action was not taken by Lt. Col. G.S. Sarohi who had by 15th March, 1983 come back and was Commanding Officer of the petitioner? Why the procedure of Rule 22 was not followed by Lt. Col. Sarohi? Why the respondent had to wait for the return of Col. C.S. Gill on 17th May, 1983 particularly when all the investigation had been done during the time of Maj. P.P. Singh and Lt. Col. Sarohi. It has come on record that Lt. Col. Sarohi did investigate. It has further been reported that accused No.2 confessed his guilt before Lt. Col. Sarohi. This shows that Lt. Col. Sarohi also conducted the investigation. The Supreme Court in the unfair trial.

(22) For the reasons stated above I am of the considered view that there is a non-compliance as well as violation of the provision of Army Rule 22. The directions to initiate the disciplinary proceedings were given by the Brigade Commander. It was not a decision of the Commanding Officer which is what is required and so stipulated under Rule 22. Since there is violation and non-compliance of mandatory rule hence the entire proceedings based on the same stand vitiated. I will not hesitate in holding that the opinion which was to be formed by Col. C.S. Gill as required under Sub Rule 3 of Rule 22 has not been placed on "record nor could be treated or shown from the file when called for and produced in this Court. The contention of Mr. Joseph that it is for the first time the petitioner has taken the ground of non-compliance of Rule, to my mind, has not force because the petitioner in his petition u/s 164(1) and 164 of the Army Act, "had raised this very ground and it is not for the First time that he has urged these contentions. The respondent cannot draw any support from the observation made by this Court in the case of Ex. Sepoy Raj Bir Singh. In that case the ground for non-compliance of the rule 22 was taken for the first time in the writ petition. But that is not the case in hand. Hence this objection of Mr. Joseph is also without "blerits.

(23) For the reasons stated above, I accept this petition and set aside the impugned orders dated 10th December, 1983 and 17th April, 1984. The cost will be borne by the parties.