

(2009) 12 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1151 of 2007, CMP No's. 1643 and 2507 of 2007

Lok Nath Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-12-2009

Acts Referred:

Army Act, 1950 — Section 112(2), 3(i), 8, 9
Ranbir Penal Code, 1989 — Section 302

Citation : (2011) 2 JKJ 254

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—The Petitioner, Sepoy Lok Nath Singh of 5271, Army Service Corps, Battalion (Mechanical Transport), attached to 15

Field Ammunition Depot, was convicted and sentenced to, Imprisonment for life and dismissal from Service, for committing a Civil Offence,

contrary to Section 302 of the Ranbir Penal Code, by the Summary General Court Martial, on December 17,2005.

2. After exhausting the remedies available to him under The Army Act, 1950, seeking annulment of the proceedings and decision of the Summary

General Court Martial, he has approached this Court, after withdrawal of his earlier Criminal Writ Petition No. 2430/2006, filed in the High Court

of Judicature at Delhi, seeking quashing of the proceedings and findings of the Summary General Court Martial, besides a command to the

Respondents to re-instate him to his Rank and Service.

3. Conscious of the reach of jurisdiction of the Court in Judicial Review, Sh. R.P.

Singh, learned Counsel appearing for the Petitioner opted to restrict his submissions questioning the jurisdiction of the Summary General Court Martial to try, convict and sentence the Petitioner for violation of the provisions of the Army Act, besides the unwarranted approach of the Army Authorities to reject erroneously his Pre and Post Confirmation Petitions, seeking annulment of the proceedings and findings of the Summary General Court Martial, hereinafter to be referred as the "SGCM", for short.

4. Referring to the provisions of Section 112 of the Army Act, it was argued by the learned Counsel that the Commander, 71 Sub Area, had erroneously convened the SGCM, when he possessed no jurisdiction, so to do, in that, the Commander may not fall within the category of the Authorities/Officers mentioned, as such, u/s 112 of the Army Act, 1950, who are empowered and authorized to convene the SGCM, which according to the learned Counsel, was not a routine constitution of the Court Martial, convening whereof was contemplated under special circumstances.

5. The Sub Area Commander, was neither on Active Service, nor was he, "the Officer Commanding the Forces in the Field", in the State of Jammu and Kashmir, and the SGCM convened by him for Petitioner's trial was thus without jurisdiction, says the learned Counsel.

6. Referring to various provisions of the Army Act, Notification S.R. Os 135-A, and 17-E besides Format A-I, Col. Dinesh Kumar Ahluwalia, the Deputy Judge Advocate General, appearing with Mr. K.K. Pangotra, Assistant Solicitor General of India, justified the convening of the SGCM by the Sub Area Commander and the proceedings, findings and the sentence recorded by it.

7. I have considered the submissions of the Petitioner's learned Counsel as also those of the Deputy Judge Advocate General.

8. The Facts leading to the filing of this Petition may be stated thus:

Mr. N.K. Bisania, Company Commander, Battalion 5271-ASC (MT), lodged a Report with Police Station, Bari Brahmana, informing it about the murder of Sepoy Binu Kumar, in the premises of the Company. Proceedings u/s 174 of the Jammu and Kashmir Code of Criminal Procedure were initiated on this Report. The proceedings later resulted in the registration of

FIR No. 169/2003 u/s 302 of the Ranbir Penal Code at Police

Station Bari Brahmana, Samba (J & K). The Final Police Report u/s 173 of the Code of Criminal Procedure, laid before the Judicial Magistrate,

1st Class, Samba, was committed by the learned Magistrate to the Court of Sessions at Jammu when, on exercise of option, the case was

transferred to the Army Authorities.

Commander 71 Sub Area, Brigadier Avinash Chander Soneja, ordered convening of the SGCM for Petitioner's trial for committing a Civil

Offence, i.e. to say, Murder, contrary to Section 302 of the Ranbir Penal Code, in that, he, at field, on October 07,2003, by intentionally causing

the death of No. 14810388F Sepoy/Mechanical Transport Binu Kumar of his Unit, committed Murder.

9. On being arraigned, the Petitioner raised special plea to the jurisdiction of the SGCM saying that Commander 71 Sub Area, was not the Officer

Commanding the forces in the field and no warrants like A-1, A-2 & A-3 having been issued by the Central Government or the Chief of the Army

Staff for convening a SGCM, to a Sub Area Commander, the convening of the SGCM was, therefore, bad in law.

10. The SGCM, on being advised by the Judge Advocate that the convening of the SGCM was covered by Section 112 (b) of the Act, upheld the

Authority of the Sub Area Commander to convene the SGCM.

11. The prosecution story goes like this.

12. On October 07,2003, at around 1645 hrs, Sepoy/Cook PJ. Rout was working inside the Mess, when the Petitioner and Sepoy R.S. Parmar

came towards the working area. Sepoy Binu Kumar present there told them ""Chalo Bartan Saaf Kar Lo"" to which the Petitioner refused. There

was exchange of some hot arguments between Binu Kumar and the Petitioner which is stated to have been later pacified by PJ. Rout. At 1815 hrs,

PJ. Rout took permission from Binu Kumar and left for the lines. At around 1900 hrs, when the Petitioner and Binu Kumar were both in JCO's

Mess, the Petitioner is stated to have fired a round, for taking revenge, which hit Binu Kumar, resulting in his death.

13. That after rejection of the Petitioner's special plea to jurisdiction, he participated in the trial, cross-examined the witnesses, and produced his

defense.

14. After conclusion of the proceedings, the SGCM, announcing its verdict/held the Petitioner Guilty, sentencing him, as mentioned at the threshold.

15. Confirmation/Post Confirmation Petitions of the Petitioner having failed, he has approached this Court, in the circumstances aforementioned.

DISCUSSION:

In order to determine the questions raised at the Bar as to whether or not the SGCM for Petitioner's trial was properly convened under the

provisions of the Army Act, 1950, hereinafter to be referred as the "Act", for short, the issues which may need determination are these:

1) Whether Commander, 71 Sub Area was on Active Service when he directed convening of the SGCM for the trial of Sepoy Lok Nath Singh of

5271 of Army Service Corps.?

2) Was Commander, 71 Sub Area, holding the position of the Officer commanding the forces in the field, hence competent to convene Summary

General Court Martial in terms of Section 112(2) of the Act?

16. To deal with the issues, perusal of the following Sections of the Act and Notifications issued thereunder becomes necessary:

Section 3 (i)- "active service", as applied to a person subject to this Act, means the time during which such person:

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country.

Section 3(vi) "Corps" means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the

provisions of this Act;

Section 3(xi) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them.

Section 7: Commanding officer of persons subject to military law under Clause (i) of Section 2.- (1) Every person subject to this Act under

[Clause (i) of Sub-section (1) of Section 2] shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps,

department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time

being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other

prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under [Clause (i) of Sub-section (1) of Section 2] under the

command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under

whose command he can be placed.

Section 8: Officers exercising powers in certain cases- (1) Whenever persons subject to this Act are serving under an officer commanding any

military organization, not in this section specifically named and being in the opinion of the Central Government not less than a brigade, that

Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps,

divisions and brigades, shall, as regards such persons, be exercised. (2) The Central Government may confer such powers, either absolutely or

subject to such restrictions, reservations, exceptions and conditions, as it may think fit.

Section 9: Power to declare persons to be on active service: Notwithstanding anything contained in Clause (i) of Section 3, the Central

Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may

be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within

the meaning of this Act.

Section 112: Power to convene a summary general court-martial.- The following authorities shall have power to convene a summary general court-

martial, namely:

(a) an officer empowered in this behalf by an order of the Central Government or of [the Chief of the Army Staff];

(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to

discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

Notification S.R.0135-A dated 22nd July, 1950.- In exercise of the powers conferred by Section 8 of the Army Act, 1950 (XLVI of 1950) and

in supersession of the Notification of the Government of India, in the Army Department, No. 2163, dated the 29th October 1920, in the Ministry

of Defence Nos. 707, dated the 1st May 1948, 2106 dated the 4th December 1948, 129, dated the 22nd January 1949, 1119, dated the 2nd July

1949, 2133, dated the 17th December 1949, S.R.O 6, dated the 6th May 1950, S.R.O.30, dated the 13th May 1950, S.R.O 76, dated the 17th

June, 1950, and S.R.O 98, dated the 15th July 1950, the Central Government is pleased to prescribe each of the officers mentioned in the first

column of the sub-joined table as the officer who is to exercise, as regards persons subject to the said Act serving under his orders, the powers

under the said Act and the rules and regulations made, thereunder, specified in the corresponding entry in the second column of the said table:

The Table

Officers Power

The General Officer Commanding-in-Chief a} The powers of an Officer Command } Commanding an Army Corps.

The General Officer Commanding an Area or } The powers of an Officer the Officer Commanding an Independent Sub-} Commanding a Division

Area}

The Officer Commanding a Sub-Area } The Officer Commanding an Independent Brigade Group } The Officer Commanding a Brigade Area }

The Commander Artillery } The Commander Army Group Artillery }

The Commander Corps Artillery }The powers The Commandant School of Artillery }of an Officer The Commandant, Armoured Corps Centre

and School, }Commanding Ahmednagar }a Brigade. The Commandant, Infantry School, Mhow, not being }

below the rank of Brigadier provided that he is station } Commander Mhow.} The Commandant, National Defence Academy, Khadakvasla} The

Commandant EME Centre } The Commander, Pathankot Base } The Military

Advisor/Attache to an Indian Embassy } Legation or a High

Commission abroad, not being } below the rank of Brigadier.}

Notification S.R.O 17-(E) dated 5 September, 1977.- In exercise of the powers conferred by Section 9 of the Army Act, 1950 (46 of 1950) and

in supersession of the notification of the Government of India in the Ministry of Defence, No. SRO 6-E, dated the 28th November 1962, the

Central Government hereby declares that all persons subject to that Act who are not on active service under Clause (i) of Section 3 thereof shall,

while serving in the areas specified below, be deemed to be on active service within the meaning of that Act for the purpose of the said Act or any

other law for the time being in force-

(1) The States of:

(a) Jammu and Kashmir

(b) Manipur

(c) Nagaland

(d) Tripura (e) Sikkim;

(2) The Union Territories of :

(a) The Andaman and Nicobar Islands

(b) Arunachal Pradesh

(c) Mizoram;

(3) The District of :

(a) Uttarkashi, Chamoli and Pithoragarh in the State of Uttar Pradesh;

(b) Lahaul and Spiti, Kinnaur and Kulu in the State of Himachal Pradesh.

Warrants A-1

Warrant for convening General Court-Martial under the Army Act.

To

THE OFFICER, NOT BEING UNDER THE RANK OF A FIELD OFFICER,
COMMANDING THE

In pursuance of the provisions of the Army Act, 1950 (XLVI of 1950), I do hereby empower you, or the officer on whom your command may

devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene General Court-Martial

for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command who is subject to Military Law

and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-martial.

17. And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

18. Given under my hand at this day of 19. Adjutant General General Chief of the Army Staff.

A-2

Warrant for confirming finding and sentences of General Courts-Martial under the Army Act

To

The Chief of the Army Staff

In pursuance of the provisions of the Army Act, 1950 (XLVI of 1950), the Central Government is pleased to hereby empower you, or the officer

on whom your command may devolve during your absence, not under the rank of Field Officer, to receive the proceedings of General Courts-

Martial held for the trial, in accordance with the said Act and the Rules made thereunder, of any person subject to Military Law, and confirm the

findings and sentence thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the

confirming officer, in such manner as may be best for the good of the Regular Army: Provided always that if by the sentence of any General Court-

Martial, a person subject to Military Law has been sentenced to suffer death, you shall in such case, as also in the case of any other General

Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to the Central Government.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given at this.....day of.....19....

By Order of the Central Government

19. Determination of Issue No. 1 may not require elaborate discussion, for exercise of power by the Central Government u/s 9 of the Act, in

issuing Notification S.R.O 17-(E), leaves no manner of doubt that all persons subject to the Army Act, who may not be otherwise construed to be

on Active Service in terms of Section 3 (i) of the Act, while serving in the State of Jammu and Kashmir, are to be deemed to be on Active Service

within the meaning of the Act and for the purposes of the Act or any other law for the time being in force, and in this view of the matter, even if

Brigadier Avinash Chander Soneja, the Sub Area Commander, had not to be treated on Active Service in terms of Section 3 (i) of the Act, for

non-applicability of the provisions of the Section to the facts of the case, yet he would be deemed to be on Active Service, in view of the

Declaration made by the Central Government u/s 9 of the Act, treating all the personnel of the Army posted and functioning in Jammu and

Kashmir, to be on Active Service in terms of and for the purposes of the Act.

20. Petitioner's counsel's submission that Commander, 71 Sub Area, was not on Active Service, while being posted in the State of Jammu and

Kashmir, as his position as Commander 71 Sub Area, was not covered by the provisions of Section 3(i) of the Act, therefore, needs to be

rejected as untenable and based on lopsided construction of the expression ""Active Service"" which needs to be understood in the light of the

provisions of Section 9 of the Act, which vests additional powers in the Central Government to declare by Notification any person or class of

persons subject to the Army Act, to be on Active Service notwithstanding any thing contained in Clause (i) of Section 3 of the Act.

21. The submission is, accordingly, rejected.

Issue No. 2 .--Was Commander, 71 Sub Area, holding the position of the Officer commanding the forces in the field, hence competent to convene

Summary General Court Martial in terms of Section 112(2) of the Act?

22. The Army Act recognizes four types of Courts Martial, viz.,

- (1) General Courts-Martial;
- (2) District Courts-Martial'
- (3) Summary General Courts-Martial; and
- (4) Summary Courts-Martial.

23. The power to convene a General Court- Martial, in terms of Section 109 of the Act vests in the Officer empowered in this behalf by an order

of the Central Government or of the Chief of the Army Staff. District Courts-Martial may be convened by an officer having power to convene a

General Court-Martial or by officer empowered in this behalf by warrant of any such officer.

24. Power to convene a Summary General Court- Martial, however, in terms of Section 112 of the Act vests in the officer, empowered in this

behalf by an order of the Central Government or of the Chief of the Army Staff; or on Active Service, the officer commanding the forces in the

field, or any officer empowered by him in this behalf; and an officer commanding any detached portion of the regular Army on Active Service

when, in his opinion, it is not practicable, with due regard to the discipline and the exigencies of the service, that an offence should be tried by a

General Court-Martial.

25. Looking to the provisions of Sections 109 and 112 of the Act, a marked difference appears to be intended in the constitution of General

Courts- Martial and Summary General Courts-Martial, in that, whereas a General Court-Martial may be convened by the Central Government or

by the Chief of the Army Staff or by any officer empowered in this behalf by warrant of the Chief of the Army Staff, a Summary General Court-

Martial, on the other hand, may be convened by an Officer empowered in this behalf by an order of the Central Government or of the Chief of the

Army Staff, meaning thereby, that the delegation for constitution of a Summary General Court Martial has to be to a specified officer of the Army,

by an order of the Central Government or of the Chief of the Army Staff.

26. The Summary General Court Martial may also be convened by the Officer commanding the forces in the field or any officer empowered by

him in this behalf, when he is on Active Service, and by an officer commanding any detached portion of the regular Army on Active Service when,

in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a General

Court-Martial.

27. Perusal of the provisions of Section 112 of the Act, therefore, indicates that besides the general power, vested in an Officer empowered in this

behalf by an order of the Central Government to convene a Summary General Court-Martial, the power, may be exercised by the officer

commanding the forces in the field, or any officer empowered by him in this behalf when he was on Active Service and by an officer commanding

any detached portion of the regular Army on Active Service when he was satisfied that it was not practicable, with due regard to discipline and the

exigencies of service, that an offence should be tried by a General Court-Martial.

28. As the Summary General Court-Martial, in question, has not been convened by any officer empowered by the Central Government, or by the

order of the Chief of the Army Staff and neither by an officer commanding any detached portion of the regular Army on Active Service in terms of

Section 112 (c) of the Act, we are left only with the provision of Section 112 (b) of the Act which has been pressed into service by the Army

justifying convening of the Summary General Court-Martial saying that Brigadier Avinash Chander Soneja, was the officer commanding the forces

in the field and thus empowered on his own u/s 112(b) of the Act, because of the position held by him as Sub Area Commander, to convene the

Summary General Court-Martial whereas the Petitioner's contention is that Commander 71 Sub Area was not the officer commanding the forces in

the field, in that, he was reporting to and working under the control of GOC Northern Command, who infact, was the officer commanding the

forces in the field and not the 71 Sub Area Commander who was working under his control.

29. The issue as to whether or not the Sub Area Commander, was on Active Service, having already been answered elsewhere in this judgment,

the only short question which needs determination is whether Brigadier Soneja, the Sub Area Commander of 71 Sub Area, was the Officer

Commanding the Forces in the Field.

30. The expression ""the forces in the field"" appearing in Section 112 (b) of the Act has not been defined in the enactment, rules, and Notifications

applicable to the personnel governed by the provisions of the Army Act.

31. The expression ""the forces"" defined in Section 3 (xi) to mean the regular Army, Navy and Air Force or any part of anyone or more of them,

referred to by the Respondents does not provide any assistance or guidance to appreciate the expression appearing in Section 112 (b) of the Act.

32. The Union of India wants the Court to hold 71 Sub Area Commander, as the Officer Commanding the Forces in the Field, pressing into

service, the analogy that being an independent Commander of the Sub Area under his command, the Sub Area Commander was to be construed

as the Officer Commanding the Forces in the Field, notwithstanding that the Sub Area Commander was reporting to, and was under the command

of the General Officer Commanding, Northern Command.

33. Acceptance of the Union of India's plea would mean that every Commanding Officer, be he/she the Commanding Officer of a Corps, Division,

Brigade, Battalion or Company, will have to be conceded the power of convening the Summary General Court Martial, which does not appear to

me, to be the intention of the Parliament, in that, the power to convene Summary General Court Martial, which exercises the same powers and

jurisdiction as that of the General Court Martial, needs to be construed to have been vested by the Statute in the same hierarchy of officers who

have been intended to be vested with the authority to convene the Summary General Court Martial, barring, however, the special conditions

contemplated by Section 112(b) & (c) where the over all controlling officers seem to have been empowered to convene the Summary General

Court Martial, subject, however, to the existence of the conditions contemplated by the Sub-section.

34. It further appears from the perusal of Section 112 of the Act that the power to convene the SGCM has been conceded only to the highest

superior officer(s) commanding the forces, either on Active Service or a detached portion of the Regular Army; subject, however to the condition

that the Officer forms opinion that it was not practicable with due regard to discipline and the exigencies of the service that a General Court Martial

be convened.

35. The aforementioned line of reasoning supports the legislative intent in vesting powers to convene General Courts Martial and Summary General

Courts Martial only in controlling superior officers of the Army. Additional support to this line of reasoning may be had from the provisions of

Section 116 of the Act, in terms whereof, power to convene Summary General Courts Martial alone have been vested in the Commanding Officer

of any Corps, Department or Detachment of the regular Army.

36. As there was no dispute, on facts, at the hearing of the Petition, that the Commander, General Officer Commanding, Northern Command, was

the over all Incharge of the Forces in the State of Jammu and Kashmir under his command, which included the 71 Sub Area too, so in presence of

the General Officer Commanding, Northern Command, in the State of Jammu and Kashmir, under whose command the Sub Area Commander is

stated to have been functioning, controlling his Sub Area and supplying logistic support to various Corps under the command of General Officer

Commanding, Northern Command, cannot by any stretch of any reasoning be said to be the Officer Commanding the Forces in the field, in that,

the expression ""the Forces in the Field"" refers to the forces, as a whole, in the field of State of Jammu and Kashmir, controlled by the General

Officer Commanding and not by the Sub Area Commander, whose field of command of the forces, was within his Sub Area, that was subject to

the over all command of the Corps Commander and General Officer Commanding.

37. In order to understand and appreciate the position of a Sub Area Commander, regard needs to be had to the provisions of Section 8, in terms

whereof, the Government may prescribe an Officer, not less than a Brigadier, Commanding any military organization, composing persons serving

under the command of any such officer, by whom the powers, which under this Act may be exercised by Officer commanding the Armies, Army

Corps, Divisions and Brigades, shall as regards such persons, be exercised.

38. It is in exercise of this power that the Central Government has issued Notification SRO135-A dated July 22,1950 vesting powers of an officer

commanding an Army Corps, a Division, or a Brigade in the Officers indicated in the subjoined table of the SRO, perusal whereof, shows that the

officer commanding a Sub-Area has been vested the powers of an officer commanding a Brigade only.

39. In this view of the matter, in the absence of any special Notification issued by the Government u/s 8 of the Act, the Sub-Area Commander

cannot be said to possess any additional powers, on the basis whereof, he may be conceded the power to convene the Summary General Court

Martial.

40. The issue in question needs to be examined from yet another angle. Section-9 of the Act vests powers in the Central Government to declare,

by Notification that any person or class of persons subject to the Act shall, with reference to any area, in which they may be serving or with

reference to any provision of the Act or of any other law for the time being in force, be deemed to be on active service within the meaning of the

Act. In exercise of the powers u/s 9 of the Act, the Central Government has issued Notification S.R.O.77-E dated September 05, 1977, in terms

whereof, the Area which has been notified for declaring person or class of persons serving there, on Active Service, is the State of Jammu and

Kashmir as a whole and not any part thereof, meaning thereby, that the officer commanding the forces, on Active Service, in the field would be the

person commanding the forces in whole of the State of Jammu and Kashmir and not any part thereof. In this view of the matter too, Sub Area

Commander cannot be said to possess the powers of the officer commanding the forces in the field which may entitle him to convene Summary

General Court Martial u/s 112 (b) of the Act.

41. There being no other provision in the Army Act or Army Rules authorizing and empowering Brigadier Avinash Chander Soneja to convene a

Summary General Court Martial, the order passed by 71 Sub Area Commander to convene Summary General Court Martial for the trial of the

Petitioner for committing Civil Offence contrary to Section 302 of the Ranbir Penal Code is without jurisdiction.

42. The upshot of the above discussion, therefore, concludes my findings on issue No. 2 that Commander, 71 Sub Area, was not holding the

position of the Officer commanding the forces in the field, hence not competent to convene the Summary General Court Martial in terms of Section

112(2) of the Act.

43. The Summary General Court Martial convened by him for the trial of the Petitioner is, accordingly, held to be without jurisdiction.

44. All proceedings taken by the Summary General Court Martial convened by the Sub Area Commander, 71 Sub Area, A Coram Non-Judice,

for the trial, conviction and sentence of the Petitioner, are, therefore, required to be annulled, being void.

45. The Petitioner had, at the very outset raised special plea to jurisdiction of the Summary General Court Martial and had even thereafter on

every occasion raised the question of jurisdiction of the Summary General Court Martial. His plea was, however, erroneously rejected by the

Summary General Court Martial and was even otherwise not properly addressed to by the Sub Area Commander, who in the facts and

circumstances, was required to exercise the alternative option u/s 157 of the Act

to refer the case to be considered by an Authority superior to him, in that, his very jurisdiction stood questioned in the proceedings. This having not been done, prejudice was caused to the Petitioner right from the very beginning in getting his trial from a properly convened Forum.

46. For all what has been said above, this Petition, therefore, succeeds and is, accordingly, allowed.

(A) By a Writ of Certiorari, the Summary General Court Martial, convened on November 05, 2005 for Petitioner's trial, proceedings, findings, conviction and sentence recorded by it and confirmed by the authorities under the Army Act, are quashed along with the warrant of detention issued, pursuant to his conviction and sentence by the Summary General Court Martial.

And Respondents are directed to Re-instate the Petitioner to his rank and service with all benefits which would have accrued to him but for his trial, conviction and sentence by the Summary General Court Martial and the proceedings taken against him under the Army Act.

(B) A further direction shall issue to the State to release the Petitioner from custody, forthwith, if not required in any other case.

Records be returned to the learned Assistant Solicitor General of India.