
(2008) 11 RAJ CK 0057
In the Rajasthan High Court

Major General A.K. Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Army Act, 1950 — Section 164(1), 164(2)

Citation : (2009) 2 RLW 1039 : (2009) 8 SLR 356 : (2009) 8 SLR 162

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—The petitioner has preferred the instant writ petition for seeking Writ, order or direction praying the following reliefs:

(i) to quash the impugned order dated 19.6.2008 and restrain the respondents from conducting General Court Martial of the petitioner;

(ii) to quash the entire proceedings initiated against the petitioner on the basis of the charge sheet dated 23/26.5.2008 (Annexure-P/12);

(iii) to hold the entire action taken on the basis of the order dated 19.6.2008 and charge sheet dated 26.5.2008 as contrary and illegal to the order dated 17.3.2008 passed by the Hon''ble High Court at Delhi (Annexure P/13); (iv) any other order or direction which the Hon''ble Court may deem just and proper in the facts and circumstances of the case may also kindly be passed in favour of the petitioner.

2. The petitioner was working as General Officer Commanding of 3 Infantry Division. On the instructions from Headquarter Northern Command, the petitioner started promoting meditation techniques as a stress buster to reduce suicide cases in High Attitude and difficult areas. The petitioner is a guide preceptor and can initiate people into meditation.

3. On 27/28.8.2007, Cap. Neha Rawat of 3 Infantry Division Signal Regiment was

detailed by her. Commanding Officer to undergo meditation sessions being conducted by the petitioner in the station. On 27.8.2007, Cap. Neha Rawat accompanied one officer's wife namely Mrs. Sharma for meditation session and herself participated in meditation session. On 28.8.2007 during meditation session, the petitioner advised Cap. Neha Rawat to give up drinking liquor if she was serious about continuing meditation as both the things do not go together. The petitioner requires high moral values and complete abstinence from liquor" and this advise was ill taken and misconstrued as if he was pointing out at her moral character. The said lady officer told the petitioner that she will ruin his character, to which the petitioner told her that she was like his daughter and asked her to have dinner, which she had. Complete staff members of the petitioner's residence were present during meditation and also at dinner. She left after having dinner cheerfully and on a happy note.

4. On 29.8.2007, a complaint was made to 14 Corps for false accusations by the petitioner against Cap. Neha Rawat. On 30.8.2007, Cap. Neha Rawat met Mrs. Bhardwaj, wife of GOC 14 Corps and on her insistence, made a written complaint to GOC 14 Corps and a conspiracy was hatched to initiate a false complaint against the petitioner.

5. It is further contended that on 31.8.2007, Col. Rajneeb Sanyal instructed Cap. Neha Rawat to pack up everything and move to "B" Officers Mess or 14 Corps. Cap. Neha Rawat moved along with her belongings to "B" Officers Mess of 14 Corps.

6. Learned Counsel for the petitioner has also contended that late in the evening on 31.8.2007, a formal written complaint addressed to GOC 14 Corps said to have been filed and on 1.9.2007 Cap. Neha Rawat was granted leave by Headquarter 14 Corps and she proceeded on leave w.e.f. 1.9.2007.

7. On 4.9.2007, the petitioner was removed from Command of 3 Infantry Division and was attached to Headquarter 15 Corps at Srinagar. The Court of Inquiry commenced its proceedings on 10.9.2007. It is alleged that the petitioner was neither supplied the copy of the complaint nor of the convening order, which is against the settled law. On 25.9.2007, the proceedings of Court of Inquiry were concluded and as many as 27 witnesses were examined and cross examined. The petitioner vide his letter dated 30.11.2007 asked for certain copies of the documents and the same were supplied to him on 1.12.2007 without report, findings and recommendations of the Court of Inquiry.

8. On 2.12.2007, hearing of tentative charge proceedings was carried out against the petitioner by Lt. Gen. P.C. Bhardwaj, Commanding Officer, and GOC 14 Corps, who ordered Summary of Evidence to be recorded. The petitioner submitted his representation to the authorities including the Chief of Army Staff and Defence Minister, through which he pointed out serious irregularities taken place at the instance of Lt. Gen. H.S. Panag, GOC-in-C, Northern Command and Lt. Gen. P.C. Bhardwaj with the aim of fixing the petitioner. The Summary of

Evidence was concluded on 20.12.2007.

9. Learned Counsel appearing for the petitioner submits that on 1.3.2008 Lt. Gen. P.C. Bhardwaj took over as GOC-in-C Northern Command and became the Convening Authority of the petitioner in place of Lt. Gen. H.S. Panag, who since moved to Lucknow as GOC-in-C Central Command. As during investigation and Summary of Evidence, Lt. Gen. P.C. Bhardwaj had exercised the powers of Commanding Officer, he is now disqualified to be the Convening Authority under Regulation 449(b) and consequently holding of trial in Northern Command becomes illegal.

10. Vide letter dated 5.3.2008 the petitioner was informed by Headquarter 14 Corps that a Summary General Court Martial (SGCM) has been ordered by GOC-in-C Northern Command on 24.2.2008 and the Court will assemble at Akhnoor on 24.3.2008.

11. Aggrieved by the said order, the petitioner filed a statutory complaint to Central Government at Delhi u/s 27 of the Army Act praying for shifting the venue of trial from Northern Command to any other area in the country which is outside the Command influence of Lt. Gen. P.C. Bhardwaj and Lt. Gen. H.S. Panag. The petitioner also prayed for setting aside the Convening order dated 24.2.2008 being unlawful.

12. During pendency of the statutory appeal filed u/s 27 of Army Act, the petitioner preferred a writ petition bearing No. 2116/2008 before the Delhi High Court and vide order dated 17.3.2008 the Delhi High Court directed that statutory petition of the petitioner u/s 27 of the Army Act be decided by the competent authority within one month and the Court martial proceedings, in the meantime, may go on but no final order will be passed, till disposal of the statutory petition u/s 27 of the Army Act.

13. Vide order dated 21.3.2008 the petitioner was attached to Headquarter I Corps under South Western Command and vide letter dated 19.6.2008 he was informed by the Headquarter I Corps that General Court Martial has been ordered by GOC-in-C South Western Command on 26.5.2008 and the Court will assemble at Bhatinda on 7.7.2008.

14. The petitioner was attached at Mathura under the South West Command having Headquarter at Jaipur. Although the statutory petition has been decided by the respondents but no copy of the decision has been provided to the petitioner. After changing the Headquarter, it is alleged that second convening order dated 26.5.2008 was passed and second charge-sheet dated 23.5.2008 was issued to the petitioner and the petitioner was informed vide letter dated 19.6.2008.

15. Thus being aggrieved with the impugned convening order dated 19.6.2008 and charge-sheet dated 23.5.2008/26.5.2008, the petitioner has preferred the instant writ petition challenging the aforesaid orders, inter-alia, on the ground

that Lt. Gen. P.C. Bhardwaj, HQ 14 Corps Leh received the complaint of the petitioner as well as complaint of Cap. Neha Rawat on 29/30.8.2007 and 31.8.2007 respectively and it is not clear that both the complaints were forwarded by the. Lt. Gen. P.C. Bhardwaj to Lt. Gen. H.S. Panag, GOC-in-C Northern Command and it appears that complaint of Cap. Neha Rawat was forwarded to GOC-in-C Northern Command and the complaint of the petitioner was retained, which resulted into passing a biased and partial order of convening dated 4.9.2007.

16. The impugned orders are further challenged on the ground that Lt. Gen. P.C. Bhardwaj with a pre-decided mind, retained the complaint of the petitioner by making false decisions and nothings and blocked the same in illegal manner and without application of mind simply forwarded the complaint of Cap. Neha Rawat to GOC-in-C Lt. Gen. H.S. Panag with a contemplation to invite an order of convening of a Court of Inquiry.

17. It is also contended that the complaint originated on account of false and mischievous motivation of wife of Lt. Gen. P.C. Bhardwaj as Cap. Neha Rawat was not inclined to file a complaint of any nature at first instance.

18. Learned Counsel appearing for the petitioner has also referred certain facts that in the evening of 30.8.2007 there was a meeting held between Cap. Neha Rawat and Mrs. P.C. Bhardwaj at her residence in 14 Corps at Leh. Further Cap. Neha Rawat was ordered to report at 14 Corps, HQ Leh and was relieved from 3 Infantry Division at Karu under the Command of the petitioner and later on she proceeded to leave on 1.9.2007.

19. It is also contended that the alleged complaint is made on 31.8.2007 under two different signatures on two sets of the complaints and thus, Lt. Gen. P.C. Bhardwaj initiated conspired acts through his wife by taking cognizance to the alleged complaint under different signatures by forwarding the same to GOC-in-C Northern Command at Udampur, At the same time the complaint of the petitioner dated 29/30.8.2007 which is prior in time, is simply ignored and brushed aside.

20. Learned Counsel for the petitioner further submits that as many as 27 witnesses were examined and cross examined in a span of about 15 days and the Court of Inquiry was concluded on 25.9.2007, which clearly demonstrates violation of principle of natural justice. Further the material witness was not examined in the Court of Inquiry deliberately and the witnesses were pressurised to give statement against the petitioner and the order of convening dated 4.9.2007 was leaked to the Press just to malign the reputation of the petitioner and the said order of convening dated 4.9.2007 is a non-speaking order

21. Learned Counsel for the petitioner also referred Rule 22 of the Army Rules, 1954 (for short "the Rules of 1954"), which reads as under:

22. Hearing of Charge.- (1) Every charge against a person subject to the Act

shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in Sub-rule (1).

(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, he is satisfied that the charge ought not to be proceeded with;

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under Sub-section (2) of Section 120 without reference to superior authority as specified therein.

(3) After compliance of Sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time-

a) dispose of the case u/s 80 in accordance with the manner and form in Appendix HI; or

(b) refer the case to the proper superior military authority; or

(c) adjourn the case for the purpose of having the evidence reduced to writing; or

(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 on active service a summary general court-martial for the trial of the alleged offender unless-

(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.

(4) Where the evidence taken in accordance with Sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge (s) on the basis of the evidence so taken as well as the investigation of the original charge.

22. After referring Rule 22 of the Rules of 1954, learned Counsel Mr. Gupta submits that the provisions of Rule 22 are not complied with and are violated in as much as the hearing of charge was dispensed with Under Order 22 Rule 1 on account of Rule 180 whereas totally extraneous charges were framed which are

even not alleged in the complaint.

23. He also referred Rules 22(2) and 22(3) and contended that compliance of Rule 22 is mandatory which has not been complied with.

24. Learned Counsel Mr. Gupta further referred Rules 23, 24, 28, 30, 31, and 37 of the Army Rules, 1954 which read as under:

23. Procedure for taking down the summary of evidence.- (1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence against the accused has been recorded, the accused will be asked: "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read to him, but he will not be cross-examined upon it. The accused may then call his witnesses, if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness of accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

24. Remand of accused.- (1) the evidence and statement (if any) taken down in writing in pursuance of rule 23 (hereinafter referred to as the "summary of

evidence"), shall be considered by the commanding officer, who thereupon shall either-

- (a) remand the accused for trial by a court-martial; or
- (b) refer the case to the proper superior military authority; or
- (c) if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily.

(2) If the accused is remanded for trial by a court-martial, the commanding officer martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case may require.

28. Charge-sheet and charge.- (1) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

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

(3) A charge-sheet may contain one charge or several charges.

30. Contents of charge.- (1) Each charge shall state one offence only and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts-

(a) statement of the offence; and

(b) statement of the particulars of the act, neglect or omission constituting the offences.

(3) The offence shall be stated, if not a civil offence, as nearly as practicable in the words of the Act, and if a civil offence, in such words as sufficiently describe in technical words.

(4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as are so referred to, shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where It is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge.

31. Signature on charge-sheet.-The charge-sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature.

37. Convening of General and District Court-martial. (1) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3) The officer convening a court-martial shall appoint or detail the officers to from the court and, may also appoint, or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall furnish to the senior member of the court with the original charge-sheet on which the accused is to be tried and, where no judge-advocate has been appointed, also with a copy of the summary of evidence and the order for the assembly of the court-martial. He shall also send, to all the other members, copies of the charge-sheet and to the judge-advocate when one has been appointed, a copy of the charge-sheet and a copy of the summary of evidence.

25. After referring the aforesaid Rules, learned Counsel Mr. Gupta has contended that the provisions of Rules 22 to 37 are mandatory in nature and the mandatory provisions are not followed by the respondents and in support of his submissions, he placed reliance on the judgment rendered by the Hon"ble Supreme Court in the case of Prithi Pal Singh Bedi v. Union of India and Ors. reported in 1982 SC 1413.

26. Learned Counsel for the petitioner further placed reliance on the judgment rendered by the Hon"ble Supreme Court in the case of Union of India and Ors. v. Dev Singh reported in Mil LI AIR 2003 SC 146, wherein the Hon"ble Supreme Court has held that "On initiation of the Court Martial Proceedings itself, the respondent raised the contention that the preliminary proceedings which directed the initiation of court Martial was in violation of Rule 22 Court Martial failed to consider the preliminary objection of the respondent-Advantage cannot be taken by the appellant herein to contend that in subsequent proceedings the lacuna, if any, in the preliminary proceedings have been rectified."

27. It is vehemently argued by learned Counsel Mr. Gupta that Summary of General Court Martial convened in the earlier command i.e. Northern Command under Army Rule 37 after conducting proceedings under Army Rule 22, 23, 24 and 31 has been annulled, cancelled and barred. "No fresh proceedings or de-novo proceedings under Army Rule 22 and 23 has been done in the present

command. According to the respondents new command resumed and restarted the disciplinary proceedings from the stage, such proceedings were left in the earlier command i.e. Northern Command. Further the compliance of Army Rule 24 has been done in the new command i.e. South Western Command by issuing a certificate. The certificate dated 2.12.2007 is the statutory compliance of Army Rules 180.

28. It is further contended that the fresh proceedings on the same complaint cannot be initiated against at all, however, in case the Army Authorities intends to continue with their perceived vendetta and exuberantion, a fresh complaint is necessary or independent facts followed by strict compliance of mandatory provisions such as 22, 23, 24, 31 and 37 to initiate any disciplinary proceedings.

29. Further after the annulment of proceedings in terms of Section 165 of the Army Act, the dead issue cannot be revived by merely changing the command.

30. Per contra, learned Counsel Mr. Pareek appearing on behalf of the respondent Nos. 1 to 4 has raised preliminary objection regarding maintainability of the writ petition and submits that the writ petition is liable to be dismissed being premature as at present no adverse order has been passed against the petitioner. The petitioner has only been asked to face the duly constituted General Court Martial under the provisions of Army Act and Rules for the offence committed by him. The trial by General Court Martial is conducted as per the provisions of the Army Act, an Act framed by the Parliament for trial of offenders, the said Army Act, 1950 has been enacted by the Parliament in the light of Article 33 of the Constitution of India and as per the provisions of the Army Act, the petitioner shall be afforded all opportunities to defend himself as trial by a General Court Martial is an open trial. The petitioner can hire the services of civil counsels to defend himself. The entire evidence shall be led on oath and right of cross-examination shall be afforded to the petitioner. The petitioner shall have right to object to the members under Army Rule 44, shall have right to object to the charge under Army Rule 49, can raise a plea to the jurisdiction under Army Rule 51, can raise a plea in bar of trial under Army Rule 53, can raise a plea of no case under Army Rule 57 and then call defence witnesses under Army Rule 59. The findings and sentence of a Court Martial are not valid till the same are confirmed u/s 153 of the Army Act. Moreover, the petitioner shall also have a remedy against the findings and sentence of Court Martial by way of pre-confirmation and post-confirmation petitions u/s 164(1) and 164(2) of the Army Act respectively.

31. It is also contended on behalf of the respondents that the petitioner has not approached this Court with clean hands as he was well aware at the time of filing of the present writ petition that main relief as asked by him in statutory complaint was already granted to him i.e., the place of trial was changed from HQ Northern Command to HQ South Western Command and the Summary General Court Martial was converted into a General Court Martial. Accordingly the petitioner was attached to Headquarter 1 Corps. The petitioner has, in fact,

reported to Headquarter 1 Corps on 24.3.2008 pursuant to the attachment order dated 20.3.2008.

32. It is also contended that the relief as claimed by the petitioner to quash and set aside the order dated 19.6.2008 and restrain the respondents from conducting General Court Martial of the petitioner, as directed by the Delhi High Court as well as by this High Court as this Court vide interim order dated 4.7.2008 has allowed the respondents to continue with the proceedings in General Court Martial, however, restrained the authority from passing final orders. Therefore, the relief claimed by the petitioner to restrain the respondents from conducting General Court Martial of the petitioner has become in fructuous.

33. The petitioner also seeks relief to quash the entire proceedings initiated against him on the basis of the charge-sheet dated 23/26.5.2008, as the proceedings are already concluded and only confirmation of the Court Martial Proceedings u/s 153 of the Army Act remains, the petitioner has got alternative efficacious remedy u/s 164(1) and 164(2) of the Army Act and without exhausting alternative efficacious remedy, the present writ petition is premature and the same deserves to be dismissed.

34. It is also contended on behalf of the respondents that all sort of objections which are raised here in this writ petition, the petitioner can raise the same before the authority by way of filing petition under Sections 164(1) and 164(2) of the Army Act respectively.

35. Learned Counsel for the respondents Mr. Pareek has not only raised preliminary objection regarding maintainability of the writ petition but also submitted that the petitioner had filed a statutory complaint which was received on 10.3.2008 and was decided on 2.7.2008 by the Central Government. In the aforesaid complaint, the petitioner has asked for threefold relief i.e. (i) to attach him to a Command outside Northern Command, (ii) to change the forum of SGCM to GCM where he can avail detailed rights to defend himself, and (iii) to cancel Court of Inquiry and Summary of Evidence. The first two requests of the petitioner were granted on 20.3.2008. The statutory complaint was rejected by the Central Government but had not interfered with the relief already granted by the authorities on 20.3.2008. The prayer for cancellation of Court of Inquiry and Summary of Evidence was since rejected by the Central Government, the petitioner, without challenging the order of the Central Government, cannot raise any plea pertaining to the same in the present writ petition and the order dated 20.3.2008 becomes final.

36. It is further submitted on behalf of the respondents that the present writ petition is premature as the order of General Court Martial on finding and sentence has not yet been finalised and is still subject to confirmation by the confirming authority. The confirming authority while confirmation may confirm, non-confirm, order revision, annul, mitigate, remit or commute the sentence as per the provisions contained in Army Rules, 1954.

37. It is also contended that due to interim order passed by this Court, final order has not been passed by the authority and in support of his submissions the learned Counsel for the respondents placed reliance on the judgment rendered by the Hon''ble Supreme Court in the case of Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others, .

38. Further the writ petition is premature as the petitioner has got alternate efficacious remedy u/s 164 of the Army Act and the same has not been exhausted. In fact, the petitioner has already sent signals in the form of petition against the order of General Court Martial, the decision on which is still pending. Therefore, in the light of the judgment rendered by the Hon''ble Supreme Court in the case of S.N. Mukherjee Vs. Union of India, the present writ petitioner deserves to be dismissed being prematures.

39. It is also contended that in the present writ petitioner has been taken plea of bias and malafides without impleading party respondent against whom allegations of malafide have been alleged. Even the petitioner failed to implead complainant Cap. Neha Rawat and Lt. Gen. H.S. Panag as respondents in the writ petition.

40. Mr. Pareek also submitted that the petitioner has raised any objection regarding non-compliance of Rules 22 and 180 of the Army Rules during the Court of Inquiry, Summary of Evidence or even during the Court Martial. The petitioner had a right under Rule 51 of the Army Rules to challenge the jurisdiction of the General Court Martial on the ground that the pre-trial proceedings against him are void ab initio and first time this place is taken in this writ petition and such plea cannot be accepted at this stage which are taken first time in the writ petition in view of the ratio decided by the Hon''ble Supreme Court in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others,

41. It has also been argued that while exercising power under Article 227 of the Constitution of India, this Court has limited scope of judicial review as held by the Hon''ble Supreme Court in the cases of (i) Union of India and Others Vs. Himmat Singh Chahar, , (ii) Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), and (iii) Major G.S. Sodhi Vs. Union of India (UOI), .

42. It has been denied on behalf of the respondents that they have not complied with the mandatory provisions of Rules 22 and 180 of the Army Rules, on the contrary, the respondents have fully complied with the provisions of Rules 22 and 180 of the Army Rules in letter and spirit, which reveals from the bare perusal of Annexure-3 (hearing of charge proceedings) that the petitioner himself has signed affirming and confirming the fact that Rule 180 of the Army Rules was complied with at the Court of Inquiry and now he is estopped to raise any plea in this regard and that too at this belated stage, especially when the same was never raised before the General Court Martial. In support of his submissions, the learned Counsel for the respondents has placed reliance on the judgments

rendered by the Hon"ble Supreme Court in the cases of Union of India (UOI) Vs. Major S.K. Sharma, and Major G.S. Sodhi Vs. Union of India (UOI),

43. In reply to the preliminary objections raised by the respondents, the learned Counsel for the petitioner has submitted that as the respondents have not followed the mandatory provisions of Rules 22 to 37 and Rule 180 of the Army Rules, therefore, the remedy provided in terms of Section 164(1) against continuation of General Court Martial proceedings would not take away a constitutional right of the petitioner to seek redressal by initiating a constitutional remedy of writ and in any case availability of alternate remedy would not bar the writ jurisdiction under Article 226 of the Constitution of India. The case in hand not only includes violation of mandatory statutory provisions of Army Act and Rules by the respondents but the writ has been invoked to prevent the infringement of fundamental rights under Articles 14,16 and 21 of the Constitution of India.

44. In support of his submissions, the learned Counsel for the petitioner has placed reliance on the following judgments:

- (1) State of Himachal Pradesh Vs. Raja Mahendra Pal and Others,
- (2) K.S. Bhoir Vs. State of Maharashtra and Others,
- (3) A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another,
- (4) State of U.P. v. Mohammad Nooh AIR 1958 SC 86
- (5) Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another,
- (6) L. Chandra Kumar Vs. Union of India and others,

45. I have heard rival submissions of the respective parties and carefully gone through the order impugned dated 19.6.2008, the material available on the record, the documents filed along with the writ petition as well as with the reply.

46. I have also gone through the relevant record of Court Martial placed by the learned Counsel for the respondents for perusal of this Court and carefully perused the judgments referred by the respective parties in support of their submissions.

47. The first prayer of the petitioner in this writ petition is to quash and set aside the order dated 19.6.2008 and restraining the respondents from conducting General Court Martial of the petitioner.

48. Seeking the above relief, the petitioner has preferred the instant writ petition on 1.7.2008 and on 2.7.2008 Mr. Sanjay Pareek has entered into caveat and the copy of the petition along with the documents annexed thereto was ordered to be supplied to him and at the request of the petitioner and looking to the urgency of the matter, the same was ordered to be listed on 4.7.2008.

49. On 4.7.2008, the Counsel for the petitioner submitted that the order was passed by the High Court of Delhi on 17.3.2008 restraining the respondents from passing final order in the Court Martial proceedings initiated against the petitioner till disposal of statutory petition filed by him u/s 27 of the Army Act. Before communicating their decision on his statutory complaint submitted by the petitioner, the respondents have proceeded in serving him a fresh charge sheet and directed him to appear before the General Court Martial vide order dated 19.6.2008 and directing to appear on 7.7.2008. It was stated at bar by the respondents that General Court Martial Proceedings have been initiated and considering the submissions made on behalf of the petitioner as well as the respondents, this Court vide interim order dated 4.7.2008 directed the petitioner to participate in the Court Martial Proceedings and the respondents were given liberty to continue the proceedings in General Court Martial, however, the authority was restrained from passing final orders till further orders.

50. So far as first prayer of the petitioner in this writ petition to quash the order dated-19.6.2008 by which Court Martial Proceedings have been initiated, since the Court Martial Proceedings has already been completed on 13.9.2008, the above prayer made by the petitioner has become in fructuous.

51. The second prayer made by the petitioner, in this writ petition is to quash the entire proceedings initiated against him on the basis of the charge-sheet dated 23/26.5.2008.

52. So far as this relief is concerned, the petitioner has got alternate efficacious remedy by way of pre-confirmation and post-confirmation petitions under Sections 164(1) and 164(2) of the Army Act respectively and he can raised all the submissions which are raised here in this writ petition as after completing General Court Martial, submitted a report to the confirming authority and the order of General Court Martial on finding and sentence has not yet been finalised and is still subject to confirmation by the confirming authority and the confirming authority may consider the submissions which are raised here in this writ petition whether the mandatory provisions of Rules 22 to 37 of the Army Rules have been followed or not, and the petitioner is at liberty to establish his case on the basis of the material available on the record with the support of legal arguments as well as the judgments and if the petitioner is able to satisfy the confirming authority, the confirming authority may not confirm the findings given by the General Court Martial or annul proceedings initiated by the General Court Martical or can remit or commute the sentence as per the provisions contained in Army Rules, 1954.

53. This Court do not want to give finding on the merits of the case as the petitioner has filed the instant writ petition without availing alternate efficacious remedy and if the observations are given on the legal questions which are raised herein this writ petition, the same would prejudice the interest of the petitioner at the time of Invoking alternative efficacious remedy by way of filing pre-confirmation and post-confirmation petitions u/s 164(1) and 164(2) of the. Army

Act respectively, but this Court Is fully satisfied that the efficacious remedy is available and the remedies which are provided under the Army Act, 1950, already available at various stages by the petitioner and the petitioner is at liberty to avail alternative efficacious remedy as provided under Sections 164(1) and 64(2) of the Army Act.

54. In view of the settled preposition of law, the writ petition which has been preferred without availing alternative efficacious remedy, is not maintainable and the same is premature.

55. This Court has also carefully perused the original record. Upon careful perusal of the original record as well as the report given by the General Court Martial, the present case is not such a case where while exercising extraordinary powers under Articles 226 and 227 of the Constitution of India, at this stage, requires any interference and this Court is restrained to give finding on the factual as well as on legal issues as giving such findings may adversely affect the interest of the petitioner. The petitioner is a liberty to file petition before the confirming authority u/s 164(1) and 164(2) of the Army Act and can raise all sort of just and legal objections, which are raised here in in this writ petition before the Confirming Authority.

56. As such, the writ petition fails being devoid of merit as the petitioner without availing alternative efficacious remedy, has preferred the instant writ petition and the same deserves to be dismissed.

57. In the result, the writ petition stands dismissed being premature with no order as to costs.

58. The interim order dated 4.7.2008 granted by this Court also stands rejected.