
(1998) 11 P&H CK 0085
In the Punjab And Haryana At Chandigarh
Case No : Criminal Writ No. 1543 of 1996

Surinder Pal Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Citation : (1999) 1 AICLR 491 : (1999) 1 RCR(Criminal) 380 : (1999) 1 SCT 491

Hon'ble Judges : R.L.Anand, J

Advocate : Kamal Sehgal, R.S. Randhawa, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Surinder Pal Singh, petitioner, ExHavildar has filed the present writ petition against Union of India through its Chief of Army Staff and Col. R.S. Phaugat, respondent No. 4 and Col. A.K. Negi, Commanding Officer of Regiment No. 325 AD and has sought the directions for the quashing of the proceedings of the Summary Court Martial and the sentence which has been awarded upon the petitioner on the ground that the proceedings of the Summary Court Martial and the sentenced awarded to the petitioner vide which he has was "reduced to Ranks", are totally illegal, without jurisdiction and that the charge which was levelled against him in order to conduct the court martial was not made out at all and was not maintainable in view of the instructions issued by the Army Headquarters itself. The petitioner has further prayed that a writ of mandamus be issued to the respondents directing them to reinstate the petitioner to the post of Havildar as he could not have been discharged before the completion of 24 years of service.

2. Though the pleadings of the petitioner are quite lengthy but the material pleadings which are relevant for the disposal of the present petition can be summarised in the following manner :

3. According to the petitioner he was serving in 322 AD Regiment since July, 1992. With effect from June, 1994, the Unit was stationed at Chandimandir.

While serving in the Unit at Chandimandir, the petitioner happened to bring out certain acts of dishonesty against some of his superiors to the notice of the higher authorities as required under the Army Act. This resulted in a vindictive action against the petitioner from his immediate superior under whom he was serving and this alleged act of vindictiveness resulted into an illegal trial by way of Summary Court Martial on a totally misconceived charge, which did not lie at all. The petitioner has complained that instead of taking action against his senior officers, on the basis of the complaint which he filed under a legal obligation, he has become a target of vindictiveness. The petitioner has also submitted that he had a clean record right from the date when he was enrolled in the Army in the year 1978 till he got the post of Havildar and even his next promotion was due as Naib Subedar, which is a Junior Commissioned Rank in the Army in order to spoil his future career on the ground that the petitioner took the courage in filing the complaint against his superiors. He was subjected to several tortures and harassment in the shape that he was sent to boxing championship against his will and wish in the year 1993 and he was forced to participate in inter sub unit wrestling championship ignoring his request and this was done so that the petitioner may be able to get a good amount of thrashing. Whosoever spoke in his favour in the Summary of Evidence recorded against him, even he was also threatened. The petitioner has given the instance of Major Malik, who appeared in the Summary of Evidence and according to the petitioner Major Malik made a request to the Commanding Officer Col. Phaugat not to harass the petitioner without his fault. When Maj. Malik made the request of Col. Phaugat, the said officer became rude and even threatened Maj. Malik that the former would spoil the Annual Confidential Report of the latter, if he dared to claim justice for the petitioner. It was even remarked by Col Phaugat that he will ensure that the petitioner would go to the house without getting his pension. According to the petitioner, Maj. Malik told Col. Phaugat that the petitioner was an honest, hard working, loyal, disciplined and dedicated to the service but in spite of that, Col, Phaugat was bent upon to harm the interest of the petitioner and in order to achieve his illegal designs, the petitioner was directed to participate in such sports events which were not even conducive for him.

4. The petitioner further alleges that when he tried to bring the matter to the notice of the higher authorities, instead of taking any action against the Commanding Officer, even the Brigade Commander tried to hush up the matter but in a one sided manner. So much so, the petitioner was withdrawn from Unit No. 322 and he was attached with Unit No. 325 on disciplinary grounds for the reason that the petitioner dared to file an application against his superiors bringing to the notice of the highups about the illegalities and irregularities being committed by the Commanding Officer. The case set up by the petitioner is that he was allotted a family accommodation w.e.f. 15.10.1993 when the Unit was located at Gwalior. The said Unit was shifted to Chandimandir. The petitioner vacated the family accommodation at Gwalior. Since, he was granted permission to stay with his wife and at the time of moving of the Unit, his wife and family

were staying with him and they also accompanied the petitioner to Chandimandir. At Chandimandir also, the petitioner was allotted a family accommodation in which the petitioner started staying. However, in order to humiliate and harass the petitioner, the quarter of the petitioner was raided by military staff because the petitioner had reported about certain irregularities and illegalities being committed by the Commanding Officer. The petitioner was allotted family accommodation in Chandimandir on 10.6.1994. He has a son and a daughter who are school going children. The petitioner made the complaint on 6.9.1994. In order to harass him, the Commanding Officer issued the instructions to the petitioner to vacate the family accommodation. These directions were given on 4.10.1994. The petitioner was allotted accommodation at Gwalior for a period of one year. He had vacated the said accommodation when the Unit moved from Gwalior to Chandimandir. A fresh allotment was made in favour of the petitioner on 10.6.1994 and the petitioner was entitled to retain this accommodation for a period of one year upto 10.6.1995. The petitioner could only be evicted from the accommodation allotted to him under the Public Premises Eviction of Unauthorised Occupants Act, 1971. The directions which were issued to the petitioner by the Commanding Officer on 4.10.1994 requiring him to vacate the family accommodation allotted to him on the ground that he had retained the accommodation for a year starting from 15.10.1993 to 15.10.1994, was totally illegal beyond his authority and without jurisdiction. The petitioner has made out a case that even if it is assumed for the sake of arguments that the stay of the petitioner in the allotted accommodation in Chandimandir was in excess of the period, he could only be evicted under the Public Premises Act. When the petitioner received the threat of eviction from the family accommodation, he sought an interview with respondents 2 and 3 in this regard but on 22.2.1995, 30/35 persons raided his house so that the petitioner may be harassed. In order to highlight his grievance, the petitioner even tried to seek an interview with the GOCinC but could not get the interview. The petitioner was apprehensive that some adverse action might be taken against him. He even filed CWP 13164 of 1995 in the High Court in which he challenged the Court Martial proceedings and the awarding of the sentence upon him. At that time, the statutory appeal of the petitioner was pending. In these circumstances, the writ petition was disposed of on the ground that since the statutory appeal of the petitioner was pending for disposal with the Government, no further action was called for.

5. Staff Court of Inquiry was also ordered on the complaint which was filed by the petitioner. These proceedings started on 28.2.1995. In spite of the fact that the matter was under investigation, the petitioner was punished. The petitioner has also challenged the Summary Court Martial proceedings mainly on the ground that the charge which has been framed against him could not be framed u/s 41 of the Army Act; that the allegations of the charge do not constitute violation of the military action : that the petitioner was not allowed to produce the relevant evidence in the shape of the statement of Major Malik; that even the

petitioner was not afforded an opportunity to lead his proper evidence and, thus, there is a total disregard to the mandatory provisions and Rules under the Army Act. As per the petitioner, charging him u/s 41 of the Army Act was totally a misconceived and illegal act on the allegation that he had not vacated the family accommodation and in the history of the Army, no person had ever been charged u/s 41 of the Army Act. According to the petitioner, it was not a lawful command within the meaning of section 41. The petitioner was even deprived of the assistance of his friend when he demanded the services of Maj. Malik. Rather, another Major was deputed so as to defend the petitioner in the proceedings. The petitioner gave his statement in defence which was curtailed and the right of the petitioner to cross-examine the witnesses was also seriously curtailed. Relevant questions were disallowed in the Summary Court Martial proceedings. The statutory appeal, filed by the petitioner was ultimately decided by the Chief of Army Staff vide order dated 23.2.1996 and the said order was despatched by the Army Headquarters on 26.2.1996. The petitioner was discharged from the Army on 26.2.1996 itself.

6. With the above main allegations, the petitioner has filed the present writ petition.

7. Notice of the petition was given to the respondents. One set of written statement has been filed on behalf of respondents 1 to 3 and 5. According to these respondents the petitioner has been punished for being absent without leave and for disobeying the lawful command of his superiors as he was serving in a disciplined force. According to the respondents, the petitioner has presented a distorted version. Conduct of the respondent authorities had remained reasonable, just and impartial but in order to attain his selfish goal, the petitioner started adopting tactics of arm twisting. The allegations which have been levelled by the petitioner against his superiors related to those matters which were two years old. Delay in lodging the complaint by the petitioner showed that the allegations were afterthought and were mere imaginations of the petitioner. The complaint of the petitioner was forwarded to the Chief Officer Commanding in Chief, Western Command whereas it should have been forwarded through Commander. The complaint was thoroughly investigated by a Staff Court of Inquiry presided over by a senior officer of the rank of Brigadier under the orders of the Headquarters and those allegations were found to be baseless. Moreover, consequent upon the findings of Court of Inquiry, the petitioner was found to be blameworthy and, therefore, disciplinary action was taken against him which ended in the trial by the District Court Martial where the petitioner was represented by a defence counsel. The petitioner held the rank of Havildar (Clerk). He was not an officer as claimed by him. He got the rank of Havildar Clerk on his turn. The sentence of reduction to Ranks which was awarded to the petitioner by the Summary Court Martial was in accordance with the statutory provisions of the Army Act for the offence committed by him under section 41 of the Army Act as the petitioner disobeyed the lawful command. At the time of his trial by the Summary Court Martial, the petitioner was attached to 325 Light Air

Defence Regiment and accordingly the Commanding Officer of the Unit proceeded with the disciplinary proceedings. The petitioner earlier levelled allegations against the Commanding Officer of 322 Air Defence Regiment which were found to be false. The discharge of the petitioner from the service was in accordance with the Army Act, Rules and Regulations and instructions and he has been legally discharged as Sepoy. The allegations which were levelled by the petitioner were duly investigated by the Staff Court of Inquiry presided over by a Brigadier who concluded that all the allegations were baseless. The participation of every NonCommissioned Officer (NCO) in unit activities, such as games and sports is to inculcate a healthy spirit and promote espritde Corps amongst all ranks. This is the practice throughout the Army. It is wrong to say that NCOs are not asked to participate in the games and sports. In fact, considering the kind the weight and health, the petitioner was asked to participate in the games which could make the petitioner physically fit. Every soldier in the Army even Tradesmen of Army like Safaiwala, Washermen and Cooks participate in the Army Sports including boxing and wrestling. When the petitioner was directed to participate in these events, it was not done in order to humiliate him. In the Army, NCOs and Jawans are motivated to participate in the various games and sports. Maj. Malik in the Court of Inquiry made a statement that nothing wrong was done in the Unit during the time the petitioner was posted in the Unit. Maj. Malik even did not speak of any irregularity in the Unit. Had there been any harassment meted out to the petitioner, Maj. Malik would have highlighted in his statement made before the Court of Inquiry when the allegations of the petitioner were being investigated. Maj. Malik started making statement against the organisation in the Court of Inquiry because he was posted to Jammu and Kashmir much against his desire and, therefore, with a mala fide intention and foul motive, he started speaking against the highups. Maj. Malik was the man who recommended the petitioner to be taken to war where fitness required of the highest standard. In fact, the statement of Maj. Malik before the Court of Inquiry was totally motivated. Inquiry at the initial stage was regarding the allegations of the petitioner and there was no requirement of the petitioner being present. The officers against whom the allegations were levelled by the petitioner were given the right to cross-examine. In order to give a fair hearing to the petitioner and to conduct an impartial inquiry, the petitioner was attached to Unit No. 325. In order to bias the mind of the superior authorities in the Army, the petitioner has surpassed all channels and approached the office of the Chief of Army Staff when the fact finding inquiry was still pending. This act on the part of the petitioner was against the Defence Service Rules and Regulations. The respondents have alleged that there was no attempt to humiliate or harass the petitioner. Rather sympathetic consideration was given to the petitioner. The matter of the petitioner getting Govt. accommodation and vacation of the same, was investigated at the high level and the allegations of the petitioner were found to be false. The fact is that the petitioner was allotted Govt. accommodation on his arrival in the unit on compassionate grounds and out of turn by way of sympathetic consideration. The Unit moved from Gwalior to

Chandimandir and the petitioner was allowed to continue staying in the Govt. accommodation. When his tenure completed, he was asked to vacate the Govt. accommodation. The petitioner stayed in the Govt. accommodation in the same Unit from Gwalior to Chandimandir, therefore, there is no question of fresh date of calculation as stated by the petitioner. Considering the education aspect of the children of the petitioner, he was allowed to stay in a hired house. This was a generous gesture of the authorities. The family accommodation in Army is allowed for one year in peace station so that other Jawans may also get fair opportunity to avail the Govt. married quarters facility. There was no manhandling or molesting of the wife of the petitioner. The petitioner himself admitted that he overstayed in the Govt. accommodation in disobedience of a lawful command given by a superior officer, a serious military offence, for which the petitioner was duly tried by a Summary Court Martial strictly. The charge against the petitioner was heard by the Commanding Officer who recorded the summary of evidence against the petitioner. He was afforded full opportunity before, during and after his trial for his defence. The Summary Court Martial found the petitioner guilty. The proceedings of Court Martial were reviewed even by the competent military authorities and those were found in order. Full opportunity was provided to the petitioner to defend himself. He was afforded full opportunity to cross-examine all the prosecution witnesses which he did to his full satisfaction. On the basis of the evidence before the court and after giving due consideration to the age and service of the petitioner, he was only sentenced "to be reduced to Ranks". The plea of the petitioner that the Commanding Officer of 325 Light AD Regiment was biased, vindictive and mala fide, are wrong. The statutory appeal (petition), which was submitted by the petitioner to the competent authority was rejected on merits as there was no force in the same. The said petition was considered by the Army Headquarters and after deliberations, it was rejected. The discharge of the petitioner from the Army was as per the Army Act, Rules and record. By denying the main averments of the writ petition, the respondents pray for the dismissal of the writ petition.

8. Respondent No. 4 Col. R.S. Phaugat also filed a separate written statement and he denied each and every allegation which was levelled by the petitioner against him personally. According to this respondent, the complaint of the petitioner was duly investigated by the Court of Inquiry presided over by a Brigadier, who did not find any substance in the allegations of the petitioner. This respondent further stated that no harassment was caused to the petitioner by him. The participation in the sports was not only limited to any trade or category of soldier. Even many Clerks and even tradesman had been participating in the sports events. When the petitioner was asked to participate in the sports events, there was no intention on the part of the deponent that the petitioner should suffer humiliation or thrashing. Respondent No. 4 has also questioned the statement of Maj. Malik given during the Court of Inquiry and has termed that statement as false and mala fide. By denying the personal allegations levelled against him, respondent No. 4 also prayed for the dismissal of the writ petition.

9. The petitioner in support of his case has placed documents on record and I would like to make a brief mention of those documents before I deal with the arguments, which were raised by the counsel for the parties in support of their case.

10. Annexure P1 is a document which would show about the promotion of the petitioner to the post of Havildar. Annexure P2 is a letter dated 6.9.1994 given by the petitioner to Lt. Gen. R.K. Gulati, GOCinC (Western Command), Chandimandir. In this letter, the petitioner has levelled certain allegations against the Commanding Officer. Annexure P3 is the notice which was issued by the Collector u/s 4 of the Public Premises Act calling upon the petitioner to vacate the married accommodation House No. 3277 SectorE Chandimandir. Annexure P4 is the receipt of the tentative chargesheet dated 29.5.1995 served upon the petitioner. Annexure P5 is the chargesheet issued to the petitioner u/s 41 of the Army Act for disobeying a lawful command given by his superior officer. This has been issued under the signatures of Col. A.K. Negi of 325 Lt. AD Regiment (Comp) and the material allegations of the charge are that on 29.4.1995, the petitioner was ordered by Maj. Dalip Singh Sachdev of 325 Lt. AD Regiment (Comp) to vacate the Govt. married accommodation but the petitioner has not complied with that command. Annexure P6 is the verdict of the Summary Court Martial when the petitioner was found guilty of the charge. It also incorporates the sentence of the court in which it has been stated that taking all the matters into consideration, the sentence imposed upon the petitioner stands "reduced to the Ranks". Annexure P7 is the copy of the order dated 30.1.1996 passed by the Division Bench of this Court in CWP 13164 of 1995, vide which it was directed to the respondent authorities to dispose of the statutory petition of the petitioner within a period of one month and till the disposal of the said petitioner, the petitioner shall not be retired from service. Annexure P8 is a petition which was made by the petitioner against Summary Court Martial award. Annexure P9 is the order, which indicates that the sentence of Summary Court Martial has been examined confirmed by the Headquarters by the Chief of Army Staff, who after due consideration had rejected the same. Annexure P10 are the minutes recorded by the General S. Roychaudhary, who dismissed the statutory petition of the petitioner on 3.2.1996. Annexure P11 is the order vide which the petitioner was discharged from service w.e.f. 29.2.1996. Annexure P12 is the letter issued under the signatures of Maj. Dalip Sachdev dated 26.4.1995 vide which the petitioner was directed to vacate the Govt. accommodation. A reading of this letter would show that directions were conveyed to the petitioner by the Formation Commander when the petitioner sought interview on 26.4.1995. During that interview, the petitioner even made a request for two months of annual leave. However, the Commander agreed to grant leave to the petitioner till 22.5.1995 so as facilitate the petitioner to appear before the High Court in connection with the case which the petitioner had filed. It has also been stated in Annexure P12 that in case the petitioner fails to vacate the married accommodation, action would be initiated against him. Annexure P13 is the

extract of crossexamination which was conducted by the petitioner upon Maj. Dalip Sachdev.

11. No documents have been produced by the respondents in support of their written statement.

12. I have heard Mr. R.S. Randhawa, counsel for the petitioner and Shri Kamal Sehgal, counsel for the respondents and with their assistance have gone through the record of this case.

13. The case set up by the petitioner is that the chargesheet, Annexure P5 was in fact an act of vindictiveness on the part of the respondent authorities as the petitioner has levelled serious allegations against the Commanding Officer that he had committed certain illegalities and irregularities while serving in that capacity. The case of the petitioner is further that asking him to vacate the accommodation at Chandimandir is not a lawful command within the meaning of section 41 of the Army Act and that he could not be asked to vacate the same. At the most, the respondent authorities could take action under the Public Premises Act. So much so, the action was taken by the respondent authorities. Also it is the grouse of the petitioner that the chargesheet, Annexure P5, indicates as if the petitioner had disobeyed the command of Maj. Dalip Sachdev of Unit No. 325 whereas Annexure P12 indicates that the direction was given by the Formation Commander when the petitioner sought interview with him on 26.4.1995. In these circumstances, the charge is totally illegal as the petitioner never disobeyed the command of Maj. Dalip Sachdev. It was also the case of the petitioner that since he was attached with Unit No. 322, he never disobeyed any lawful command of any superior officer of Unit No. 322 but he has been punished for allegedly disobeying the command of an officer attached with Unit No. 325 and, in these circumstances, the proceedings are totally illegal.

14. Section 41 of the Army Act lays down that any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise shall, on conviction by courtmartial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

In order to attract the provisions of section 41, the following ingredients are necessary :

1. Disobeying in order to show wilful defiance of the authority, and
2. Any lawful command given personally by his superior in the execution of his office whether the same is given orally, or in writing or by signal or otherwise.

15. The counsel for the petitioner submitted that the command must relate to military duty i.e. to say that disobedience it must tend to impede, delay, or prevent a military proceeding. The disobedience must have reference to the time at which the command is to be obeyed. The counsel also submitted that if the

disobedience of a lawful command given by a person who is not a superior officer within the meaning of section 3(xxiii), then in that eventuality, there is no violation as per the provisions of section 41 of the Army Act. The counsel wanted to convey that the command to the petitioner, if any, was by the Formation Commander who gave directions on 26.4.1995 but the charge talks in different terms as if the command was given by Maj. Dalip Sachdev who was not a superior officer of the petitioner. In support of his contention, the petitioner has drawn my attention to Annexure P5 and P12.

16. I have examined these documents together minutely. However, I am convinced that the submission which has been raised by the learned counsel for the petitioner deserves to be rejected. At the time when the chargesheet was issued to the petitioner, he was attached with Unit No. 325. In these circumstances, the officer superior in Unit No. 325 was a superior officer of the petitioner and if such superior officer was discharging his duties in the execution of his work and if he issues the directions and command to the petitioner and if the petitioner disobeys that command, it will be a disobedience on the part of the petitioner and will be considered as a wilful defiance of the authority of lawful command and, thus, the petitioner would be liable for punishment. Annexure P12 has to be read in depth. It is dated 26.4.1995. This conveys that as per the direction conveyed to the petitioner, by the Formation Commander dated 26.4.1995 itself, the petitioner was directed to vacate the Govt. married accommodation No. 3277. The directions which were conveyed to the petitioner by the Formation Commander were repeated by Maj. Dalip Sachdev also though at the instance of the Formation Commander. Para 3 of the letter Annexure P12 clearly indicates that the command was also given by Maj. Dalip Sachdev calling upon the petitioner to vacate the married accommodation as directed failing which action would be initiated against the petitioner. With this background, Annexure P5 is to be seen. It talks of an order dated 27.4.1995 issued under the orders of Maj. Dalip Sachdev. Thus, there is a clear indication that earlier the Formation Commander issued the directions to the petitioner on 26.4.1995 and those very directions were repeated by Maj. Dalip Sachdev on 27.4.1995. The petitioner violated those directions as a result of that the petitioner was chargesheeted vide Annexure P5.

17. Now, the short point for determination would be whether the command which has been given to the petitioner related to military duty or not, which is to be construed separately from active duty.

18. Military duty as such has not been defined in the Army Act but I am not inclined to accept the contention of Mr. Randhawa when he submitted that a narrow meaning should be given to the words "military duty". The counsel submitted that the petitioner was working on an establishment job. The gravamen of the charge against the petitioner is that he violated the directions in not vacating the premises. This does not invite violation of a military duty but at the most the action could be initiated against the petitioner under the Public

Premises Act and in fact the military authorities had taken action, therefore, the charge itself is violative of the provisions of section 41 of the Act. In the view of this Court, the words "military duty" have to be read in a broader perspective. If the violation of the command is by a person subject to the Army Act, such violation will be a violation of the military duty.

19. Mr. Kamal Sehgal, counsel for the respondents, has invited my attention to a Full Bench decision of Madhya Pradesh High Court reported in AIR 1973 Madhya Pradesh 191. Two Hon"ble Judges disagreed with their companion Judge and held that an order of superior officer directing the officer charged to attend the record of evidence before the Court of Inquiry is perfectly valid and not violative of Rule 25 and the disobedience of the same constitutes an offence u/s 41. They have understood the lawful command in the broader perspective and were not inclined to give a narrow interpretation to the terms "lawful command". If the petitioner had violated the command of Maj. Dalip Sachdev when he directed the petitioner to vacate the accommodation, the disobedience of the same by the petitioner was in the discharge of his military duty. The petitioner was a member of a disciplined force. The command was not unlawful as the petitioner had already exceeded the period for which the accommodation was allotted. In these circumstances, it was obligatory on the part of the petitioner to vacate the accommodation. By not doing so, he violated the directions of his superiors of Regiment No. 325 with which he was attached and, thus, the charge framed against the petitioner was perfectly in accordance with law.

20. This court is not to go into the sufficiency of evidence led by the department against the petitioner in the Summary Court Martial proceedings but is supposed to confine itself as to whether any illegality has been committed in violation of section 41 of the Army Act; whether the authorities exceeded jurisdiction or whether the impugned order has been passed without jurisdiction. If the case of the petitioner is not covered with any of these propositions, the petitioner will not be entitled to any relief. This was the principal argument which was raised by the counsel for the petitioner.

21. Supplementing his arguments, counsel for the petitioner argued that the petitioner was attached with regiment No. 322 and not with 325 and, therefore, any action taken by Regiment No. 325 was violative of section 41 of the Act. This is, again, not true. It is the stand of the Union of India that the petitioner was attached with Regiment No. 325. It was so done so as to conduct an impartial enquiry with regard to the allegations levelled by the petitioner. The command was from Regiment No. 35 given by a superior office. The petitioner did not obey the command as a result of which action was taken against him. Also it was the submission of the counsel for the petitioner that confirmation of the order by the competent authority was bad; that the petitioner was not afforded full opportunity to crossexamine the witnesses. So much so, Maj. Malik whose testimony was recorded during the Court Martial Proceedings had not been allowed to appear. Even the petitioner was not allowed to make his statement in

defence. The submissions which have been raised by the counsel for the petitioner are not borne out from the record. Every conceivable evidence is not supposed to be allowed in the proceedings. Maj. Malik made some statement in the summary of evidence which was recorded in favour of the petitioner. Some portion of his statement has been given in para 7 of the writ petition. Maj. Malik has only stated that the petitioner was an honest person, he was well disciplined and dedicated to his service. There was threat given by Col. Phaugat that he would spoil his career when the latter asked Col. Phaugat to impart justice to the petitioner. The averments made in this para are more on the lines to seek the sympathy of the court. I cannot lose sight of the fact that the substance of the charge is that the petitioner did not vacate the accommodation by the stipulated date i.e. 29.4.1995 when he was asked to do so, firstly by the Formation Commander and then by Maj. Dalip Sachdev on 27.4.1995. To that extent there is no rebuttal even from the side of Maj. Malik. If Maj. Malik had his own axe to grind qua Col. Phaugat, that cannot be the subject of determination in the Summary Court Martial proceedings. With regard to the curtailment of the evidence, again, there is no substance. Petitioner if put questions which were totally inadmissible and not relevant to the enquiry, those questions can be turned down. The petitioner had appeared before the Summary Court Martial proceedings but he was beating about the bush. The order of court martial was passed by an officer of the rank of Colonel against whom there is no bias alleged even by the petitioner. The order vide which the petitioner was reduced to ranks was affirmed by the Chief of Army Staff after deliberations. What it appears to me is that the petitioner wanted to make capital of his earlier allegations by invoking the same in the present matter. He had disobeyed a lawful command of the superior officer and was liable for action. The High Court is not sitting as a Court of Appeal over the findings of the Summary Court Martial. The scope is limited. The petitioner has not been able to make out a case of violation of section 41 of the Army Act or the violation of the principles of natural justice. The orders have been passed by the authorities which was competent to pass such orders.

22. In this view of the matter, I do not find any substance in the writ petition and dismiss the same with no order as to costs.