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**(2001) 05 DEL CK 0175**

**In the Delhi High Court**

**Case No : LPA No. 523/98**

Union of India and another

APPELLANT

Vs

Captain S.S. Mehta

RESPONDENT

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**Date of Decision :** 21-05-2001

**Acts Referred:**

Army Act, 1950 — Section 164(2)  
Constitution of India, 1950 — Article 226

**Citation :** (2001) 05 DEL CK 0175

**Hon'ble Judges :** M.S.A. Siddiqui, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** Mr. Sanjeev Sachdeva, for the Appellant;

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## **Judgement**

M.S.A. Siddiqui, J.—This appeal under Clauses x of letters Patent is directed against the judgment dated 27th May, 1998 of a Single Judge of this Court in Writ Petition No. 720 of 1995 quashing the sentence awarded by the General Court Martial to the respondent.

2. Shorn of verbiage, facts giving rise to this appeal are that a general court martial under the Army Act (fort short "the Act") was convened to try the respondent for having voluntarily caused hurt to Sepoy Driver (M.T.) Bhoop Singh on the night intervening 18/19-11-1988. After conclusion of the Court Martial proceedings, the respondent was held guilty of the said offence and was sentenced to take rank and precedence as if his appointment as substantive Captain bore dated 30th August, 1983 and to forfeit one year of service for the purpose of the promotion. The sentence passed against the respondent was confirmed by the confirming authority as required under the Act vide orders dated 8th February, 1991. On 30th June, 1993, the respondent filed a petition u/s 164(2) of the Act against his conviction and sentence and the same was considered and dismissed by the Central Government vide orders dated 18th July, 1994. On 23rd February, 1995, the respondent filed a writ petition being Writ Petition No. 720/95 challenging validity of his conviction and sentence

awarded by the General Court Marital. The learned Single Judge, on re-appreciation of the evidence produced before the General Court Marital, concluded that there was no evidence to sustain the respondent's conviction and sentence. He, Therefore, allowed the writ petition and set aside the respondents's conviction and sentence. Aggrieved thereby, the appellant has filed the present appeal.

3. Assailing validity of the impugned judgment, the learned counsel for the appellant has strenuously urged that the learned Single Judge has committed a patent illegality by setting aside the respondents's conviction and sentence on re-appraisal of the evidence adduced by the prosecution before the General Court Marital. We find considerable force in the said submission the learned counsel. It is well settled that the proceedings in respect of court marital can be quashed in exercise of power of judicial review if they suffer from a jurisdictional error or any error of law apparent on the face of the record. S.N. Mukherjee Vs. Union of India, ; Ex. Major R.S. Budhwar Vs. Union of India (UOI) and Others, AND Balwan Singh Vs. UOI and Ors. 87 2000 DLT 229.

4. We have perused the record of the proceedings of the General Court Marital and we are satisfied that the proceedings have been conducted in accordance with the relevant provisions of the Act and the rules framed there under. The record reveals that in all 11 witnesses including the complainant Bhoop Singh were examined by the prosecution and adequate opportunity was given to the respondent to cross-examine them. The respondent has also examined four defense witnesses including himself. Thus, the respondent was afforded full opportunity to be present throughout the proceedings and for submitting anything in his defense. It is also pertinent to mention that during course of the said proceedings, the respondent did not raise any grievance regarding non-compliance of the provisions of any rule of the Army Rules. We also find that full opportunity was granted to the respondent to conduct his case and proceedings could not be more fair. That being so, no fault could be found with the proceedings before the General Court Martial.

5. In the instant case the learned Single Judge meticulously juxtaposed the evidence of the prosecution witnesses on the disputed points and held that the evidence adduced by the prosecution does not inspire confidence and on that ground alone he has set aside the respondent's conviction and sentence. It is equally well settled that plenitude of power available to this Court under Article 226 of the Constitution is not the same as that is available to a Court hearing an appeal against conviction. It is axiomatic that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and the power of judicial review is meant to ensure that the judicial or quasi judicial Tribunal exercising quasi judicial powers do not exceed their statutory jurisdiction and correctly administered the law laid down by the statute under which they act B.C. Chaturvedi Vs. Union of India and others, As noticed earlier, the learned Single Judge has re-appreciated the evidence adduced by the prosecution as if

he was hearing an appeal against a conviction in a criminal case. Consequently, we are constrained to observe that the learned Single Judge has exceeded his jurisdiction by re-appreciating the evidence and holding that the prosecution evidence is insufficient to sustain the respondent's conviction. In our opinion, the evidence of complainant Bhoop Singh alone is sufficient to sustain the conviction of the respondent for the offence complained of. That being so, the impugned judgment of the learned Single Judge cannot be sustained in law.

6. In the result, the appeal is allowed and the impugned judgment dated 27.5.1998 is set aside. No order as to costs.