

**(1999) 09 J&K CK 0005**

**In the Jammu And Kashmir High Court**

**Case No :** Letters Patent Appeal No. 73 Of 1988

Union of India

APPELLANT

Vs

D.P.Bose, Ex.Lt.

RESPONDENT

**Date of Decision :** 06-09-1999

**Acts Referred:**

Army Act, 1950 — Section 164, 39, 71  
Constitution of India, 1950 — Article 226

**Citation :** (2000) SriLJ 34 : (2000) 1 SriLJ 34

**Hon'ble Judges :** Bhawani Singh, C.J and Syed Bashir-Ud-Din, J

**Bench :** Division Bench

## Judgement

Bhawan1 Singh, Chief Justice.

1. This appeal is directed against order of Single Judge dated 29071988, whereby petition has been allowed and order of dismissal or petitioner

from services set aside. Briefly, it may be pointed out that the petitioner was Ex. Lt. in Indian Army attached to 3 Rajput. After his training from

'Mhow', he came to Srinagar to join his unit. At 'Mhow' on 31st of May 1988. he sought leave from his Commanding Officer, for permission to

leave to Calcutta to attend his ailing mother. He was advised to approach Brigade Commander for sanction of leave. It appears that without

seeking sanction of leave he left the unit which was at Gulmarg for training and exercise.

2. Aforesaid action of petitioner amounted to absence without leave u/s 39 of Army Act 1950 and petitioner was proceeded against by convening

GeneralCourtMartial. The proceedings so taken resulted in the ultimate dismissal of petitioner, against which he did not file statutory appeal under

Section 164 of Army Act. instead he approached this Court by way of writ

petition which has been allowed by the impugned judgment. Hence this appeal by Union of India.

3. Petitioner has been served, but he has not appeared to defend his case either personally or through counsel. Matter being old, we proceed to deal with it finally on merits.

4. Having examined the case file and submissions made by Mr. Anil Bhan, Sr. Central Govt. Standing Counsel, we are of the opinion that it deserves to be allowed and impugned judgment to be set aside.

5. From record we find that there is authorisation in favour of GOC 15 Corps to convene General Court Martial. It is stated in letter dated February 23, 1955, issued by General Commander in Chief. Therefore, the first point as pointed by learned Single Judge.

6. Next question is whether the proceedings of Court Martial have been conducted properly and in accordance with law?

7. From perusal of the record, we find that proceedings have been conducted in accordance with law. Petitioner was afforded opportunity of being

heard and allowed to defend himself through counsel namely Shri S.L. Koul. It is on the basis of evidence so recorded that the ultimate findings

have been recorded by the General Court Martial, holding the petitioner guilty of offence committed by him. It is settled position that jurisdiction of

this Court in such like cases is not very wide, it does not sit as an Appellate Court and examine and appreciate the evidence in that fashion. The

approach of the Court has to be limited one with circumspection to examine the question whether a person has been conducted unheard and

proceedings have been condemned in gross violation of the statutory provisions and there be no evidence supporting the findings of the Court

Martial. In some cases. Court may say whether the penalty is disproportionate to the offence committed by the delinquent. As said, proceedings

have been conducted in accordance with statutory provisions. Findings are based on evidence after following the statutory procedure provided

under the Act. Looking to the nature of offence committed by the petitioner, that he left the unit without proper sanction of leave which he could

not avail as a matter of right, the punishment awarded is quite reasonable. It is a dismissal simplicitor and is justified in facts and circumstances of

the case in terms of the Section 71 of Army Act.

8. For all reasons stated above, there is merit in this appeal and same is allowed. Order passed by learned Single judge is set aside and the decision of the CourtMartial maintained.