

Dr. Subhendu Sen (Vsm) Vs. Government of India and ors.

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Court : Andhra Pradesh

Decided On : Dec-19-1997

Reported in : 1998(1)ALD773

Judge : D.H. Nasir, J.

Acts : [Army Act, 1950](#) - Sections 39, 52, 71, 74, 153, 154, 155(2), 157, 158, 160(1), 164(1) and (2) - Rules 68(3) and 105; [Constitution of India](#) - Articles 33 and 226

Appeal No. : WP No. 27714 of 1996

Appellant : Dr. Subhendu Sen (Vsm)

Respondent : Government of India and ors.

Advocate for Def. : Mr. D. Krishna Murthy, Addl. SC for Central Govt.

Advocate for Pet/Ap. : Mr. G. Ramachandra Rao, Adv.

Judgement :

1. The petitioner has questioned the legality and validity of the findings of General Court-Martial as confirmed by the General Officer Commanding in Chief, Southern Command (3rd respondent) on the ground that the findings are contrary to law and evidence on record, biased and mala fide .

2. The petitioner had passed MBBS from Calcutta University in the year 1967. He joined Army Medical Corps in the year 1969 and was commissioned in the Indian Army on 23-7-1969. He rose to the rank of Lieutenant Colonel in Indian Army.

3. On 10-11-1993 he was charge-sheeted for the following acts of misconduct:

(1) That the petitioner dishonestly misappropriated a sum of Rs.51,400/-belonging to the persons subject to Military Law while he was working as Commanding Officer 2089, Field Ambulance at Kamptee;

(2) That he dishonestly misappropriated a sum of Rs.74,641.55ps. belonging to the CSD Canteen during the period 22-6-1991 to 22-11-1992;

(3) That he dishonestly misappropriated a sum of Rs.5,684/- belonging to the non CSD canteen; and

(4) That he absented without leave from 8-2-1993 to 7-4-1993.

The first three charges were framed under Section 52(b) and the 4th charge was under Section 39(a) of the [Army Act, 1950](#).

4. The General Court-Martial proceedings commenced on 22-11-1993 and concluded on 11-3-1994. During the proceedings 32 persons were examined as PWs. 1 to 32 and several documents were exhibited on behalf of the prosecution and the defence. The petitioner was also examined. Three witnesses produced by him were also examined. On 10-3-1994 the written closing address of the Defending Officer was submitted to the Court-Martial and the matter was adjourned to 11-3-1994 for the Judge-Advocate to submit his written summing up. Accordingly the Judge-Advocate submitted his written summing up running into 85 pages on 11-3-1994 and on the same day the Court-Martial gave its findings holding the petitioner not guilty of the first charge, but guilty of 2nd, 3rd and 4th charges and awarded sentence as follows:

(a) To be cashiered; and

(b) To forfeit four years of past service for the purpose of loss of pension.

5. The petitioner submitted a detailed representation on 26-3-1994 under Section 164(1) of the Army Act to the Confirming Authority in which the petitioner pleaded that the proceedings of Court-Martial suffered from several lapses and that the Judge-Advocate had adopted a biased and partisan attitude and urged the Confirming Authority not to confirm the findings and sentence of the General Court-Martial- But the Confirming Authority did not consider the same, according to the petitioner, and took action under the provisions of Section 164(1) of the Army Act. The Confirming Authority arbitrarily rejected his representation on 28-5-1994, according to the petitioner, without assigning any reason and in fact proceedings dated 3-5-1994 were issued calling upon the General Court-Martial to reassemble on 6-5-1994 to reconsider his findings on charge No.1 as also the sentence awarded to the petitioner. The petitioner alleges that even the Confirming Authority was totally biased and prejudiced against him and that he exceeded his powers and jurisdiction vested in him under Section 154 of the Army Act by interfering with the judicial discretion vested in the General Court-Martial. The General Court-Martial accordingly reassembled on 6-5-1994 and reconsidered its findings and sentence and having done so, the findings earlier recorded against the petitioner were reaffirmed. The General Court-Martial also revised the sentence already awarded by addition of the following in its proceedings dated 7-5-1994:

'(i) To be cashiered;

(ii) To forfeit four years of past service for the purpose of pension; and

(iii) To forfeit all arrears of pay and allowances and other public money due to him at the time of cashiering."

The General Court-Martial, however, did not record any additional evidence for revising the sentence awarded to the petitioner. The petitioner alleges that the sentence was revised on the basis of the biased and prejudicial proceedings dated 3-5-1994 of the Confirming Authority with a view to appeasing the Confirming Authority. The same were confirmed by the Confirming Authority as per his proceedings dated 29-5-1994.

6. Aggrieved by the same, the petitioner preferred an appeal on 10-6-1994 under Section 164(2) of the Army Act to the President of India. However, the same was not considered on merits by the Competent Authority and the petitioner was informed vide letter dated 7-6-1995 by the 1st respondent that his appeal was rejected. No reasons were assigned for the same.

7. On 4-8-1995 the petitioner again made a representation to the 1st respondent (Government of India, Ministry of Defence, Delhi) to sanction his pensionary benefits as he was in financial crunch, but the same did not elicit any response. On the contrary he received a notice dated 21-8-1995 from the 1st respondent to show cause why his pensionary benefits should not be withheld. The petitioner submitted his representation on 20-9-1995, but no action was taken till the petitioner made the present writ petition.

8. The petitioner attacks the findings of the General Court-Martial as ex facie erroneous and contrary to the evidence on record and that the sentence awarded to him was unjust and arbitrary. The General Court-Martial failed to exercise his judicial discretion vested in him under law and that the General Court-Martial was totally misguided by the Judge-Advocate, who was biased against the petitioner. Further, according to the petitioner, one Lt. Colonel G.P. Taneja who took over charge of 2089 Field Ambulance after he was transferred from the said unit hatched a conspiracy with his subordinates and implicated him in some financial discrepancies in the accounts of the unit and also in the accounts of CSD and Non-CSD Canteens at Kamptee.

9. It is further contended by the petitioner that the General Court-Martial would have held him not guilty of the charges levelled against him had the Judge-Advocate not advised the members of the General Court-Martial in an unfair and partisan manner. The Judge-Advocate had a prominent and significant role in the Court-Martial Proceedings. All the disqualifications specified in the Army Act which apply to Court-Martial also apply to the Judge-Advocate. The accused, according to the petitioner, at the trial could object to the participation of any member of the Court-Martial, but he had no right to object to the participation of the Judge-Advocate. At the same time it was necessary that the Judge-Advocate should be

impartial and should seem to be acting impartially.

10. Further, according to the petitioner, he was assisted by one Major B.N.S. Tyagi during the trial and he was designated as Defending Officer. He was an experienced Regimental Officer with no legal qualifications. When the petitioner and his Defending Officer observed that the Judge-Advocate heavily tilted in favour of the prosecution, they objected to his continuation as the Judge-Advocate and inter alia gave the following advice to the members of the General Court-Martial:

'The conduct of the Judge Advocate is known to you and should you find that the assertions of the defence are correct, you should adjourn and report the same to the convening authority and ask for change of Judge Advocate. As for duties of Judge Advocate, kindly refer to Army Rule 105 (read). On the other hand, should you find that the Judge Advocate has been proceeding in an impartial manner and the defence is making this assertion to enable him to present a case before a Civil Court, you may continue this trial.'

This, according to the petitioner, would clearly show that the Judge-Advocate took a view that the petitioner's objection to his presence was mainly a step taken to drive the petitioner to approach a Court of Law subsequently. Further, according to the petitioner, his objection was against the Judge-Advocate and he should not have taken upon himself to advise the members of the General Court Martial on the issue in question, but should have left it entirely to the members of the Court Martial to decide. The Judge Advocate, according to the petitioner, not only misled the Court Martial by his approach and biased advice but he would have subsequently influenced the members of the General Court Martial in the closed Court.

11. Let it be clearly understood that this Court in exercise of powers under Article 226 of the [Constitution of India](#) is not required and it would not be legal and proper for this Court to reappreciate the oral and documentary evidence for the purpose of arriving at a conclusion whether the allegations were proved. The Court is expected in its writ jurisdiction to confine its scrutiny only to a limited extent whether the authorities have acted in excess of the jurisdiction vested in them and

whether the petitioner was subjected to any hostile discrimination, but not whether the finding of guilt against the petitioner was motivated by any bias or prejudice against the petitioner, unless any bias or prejudice is clearly manifested from the oral and documentary evidence on record, but nothing is pointed out from the evidence which could give rise to an inference that the alleged bias or prejudice was caused to the petitioner. If any patent illegality or impropriety of the finding of guilt and the consequent punishment was noticed, interference by High Court in exercise of its writ jurisdiction can also not be over-ruled

12. In the present case, it appears that the petitioner has laid great emphasis on the proposition that the Judge-Advocate had developed a prejudice against the petitioner as a result of which he indulged into rendering such advice which would tend to hold the petitioner guilty and, therefore, the entire proceedings were vitiated on that account. The petitioner also feels agitated on the ground that the Confirming Authority exercised his jurisdiction which was not vested in him by directing the Court Martial to reconsider the extent of punishment awarded to the petitioner. The petitioner also vehemently challenges the document-Ex.BBBBBB on the ground that the handwritten endorsement between the typed-written matter and the petitioner's signature was subsequently interpolated without his knowledge for the purpose of proving the allegations made against him on the basis of such endorsement.

13. The respondents of course deny the allegations made by the petitioner against them. They have endeavoured to explain in their affidavit how the finding of guilt recorded against the petitioner was justified and how the sentence awarded to him was legal and proper. According to the respondents, no illegality or irregularity as alleged by the petitioner was committed either in the trial before the General Court Martial or in the proceedings before the Confirming Authority as well as the Appellate Authority. According to the respondents, the action of the Confirming Authority was strictly in accordance with law and he did not commit any illegality or irregularity. He was not biased or prejudiced against the petitioner and no one had any ill-will against the petitioner. It is further contended that the Confirming Authority had power to revise the findings and sentence recorded by the General Court Martial. It was not necessary for the Court Martial to record additional

evidence while reconsidering the finding and the sentence.

14. It is further contended by the respondents that Army Rule 68 lays down that when a proceeding is sent back for revision, the Court will adhere to the revision order. If the order is to revise the finding the Confirming Authority must point out the reasons as to why he feels that a particular finding is to be revised. The Court will then apply its mind again on the whole issue and decide accordingly. Similarly, when the order is for revision of sentence, the Court will deliberate the matter and either stick to the sentence awarded or award a harsh sentence. The rule is quite clear that the Court will adduce fresh evidence only when so ordered by the Confirming Authority. Under Section 158 of the Army Act, the Confirming Authority had power to mitigate or remit or commute a punishment awarded by the Court Martial and, therefore, when a sentence is directed to be revised by the Confirming Authority, it necessarily means that the Confirming Authority considers that the punishment awarded by the Court Martial is not commensurate with the gravity of the offence and warranted upward revision of the sentence. An order under Section 160 of the Act, according to the respondents, is a sort of an application for revision by Confirming Authority.

15. The allegation made by the petitioner that the Judge Advocate was biased is also refuted by the respondents and it is asserted that such allegation was totally false and baseless. According to the respondents, the Judge Advocate carried out his duties in a totally impartial and unbiased manner and in accordance with law. There was no reason why the Judge Advocate should be biased against the petitioner. He was an independent Officer assisting the Court. Whether to abide by the Judge Advocate's advice or not was at the discretion of the Court. The fact that the Judge Advocate had in his summing up apprised the Court that in cases of dishonest misappropriation, once the prosecution established a prima facie case, it was for the defence to prove otherwise by adducing evidence as to the circumstances which could prove that there was no dishonest misappropriation because those circumstances were known to the accused.

16. It is further contended by the respondents that it was not true to suggest that a sentence of Cashiering could be awarded only when the delinquent was awarded

either death sentence, imprisonment for life or imprisonment. Section 74 of the Army Act does lay down that a sentence of death, imprisonment for life or imprisonment must be followed by a sentence of Cashiering, but it does not say that a sentence of Cashiering cannot be awarded otherwise. It is further contended by the respondents that one would not expect a Commanding Officer to misappropriate the money and material belonging to his men. It is, according to the respondents, a very serious offence involving moral turpitude and the petitioner deserved the punishment awarded to him. A single instance of dishonesty was sufficient to impose the sentence of Cashiering, according to the respondents. Further, according to the respondents, the fact that the General Court Martial on revision did not revise the earlier findings of 'not guilty' on the first charge as proposed by the Confirming Authority was an ample proof of the fact that the authority arrived at the finding and sentence after due deliberations and was in no way influenced by the observations of the Confirming Authority and that there was absolutely no illegality in the General Court Martial revising the finding and sentence.

17. On the question of appeal preferred before the Central Government by the petitioner, the respondents assert that there was no arbitrariness in rejecting the appeal and that it was a settled proposition of law that no reasons need be given for rejecting the appeal. The respondents also brought to the notice of the Court the first paragraph of the written statement of the petitioner in the revision proceedings which reads as follows:

'This Hon'ble Court is the Apex Court of Indian Armed Forces and consists of very senior experienced and competent officers. For nearly four months, the Court had taken great care and pain to weigh every possible pros and cons of evidences placed before it both by the prosecution and defence before giving the verdict of the punishment. To me your judgment of finding of 'not guilty' on the first charge is absolutely impartial. It definitely had proved that this August Court was uninfluenced by the pressure whether from within or without'

18. Section 153 of the Army Act provides that no finding or sentence of a general, district or summary general, Court Martial shall be valid except so far as it may be

confirmed as provided by the Act. Section 157 lays down that the findings and sentences of summary general Courts-Martial may be confirmed by the convening officer or if he so directs, by an authority superior to him. Under Section 158, subject to such restrictions, reservations or conditions as may be contained in any warrant issued under Section 154 or Section 155 and to the provision of sub-section (2), a confirming authority may, when confirming the sentence of a Court-Martial, mitigate or remit the punishmentthereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in Section 71. Section 160 of the Army Act provides for revision of finding or sentence and lays down as under:

'(1) Any finding or sentence of a Court Martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the Court, if so directed by the confirming authority, may take additional evidence.

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided that, if a general Court Martial, it still consists of five officers, or, if a summary general or district Court-Martial, of three officers.'

19. From the above provisions of law nothing emerges to accept the submissions made by the learned Counsel for the petitioner that the Confirming Authority under the provisions of the Act can only confirm the order or reject it. He is not an appellate authority as seen above. Section 160 clearly provides that the Confirming Authority is empowered to revise the order submitted for its confirmation. It is further provided therein that the Court may take additional evidence if on revision it is so directed by the Confirming Authority. It is true that the Confirming Authority cannot be treated on par with the Appellate Authority, but the power of revision has been specifically conferred on the Confirming Authority by the afore-said provisions of the Act and it is not correct to say that the Confirming Authority had only to confirm or reject the order put up for his

confirmation It was further submitted on behalf of the petitioner that the Confirming Authority while exercising the power of revision had no right to review the entire evidence. But no such constraint is imposed on the Confirming Authority by the provisions of the Act to desist from reviewing the oral and documentary evidence while exercising the power of revision and, therefore, this submission made on behalf of the petitioner also cannot be accepted.

20. It was also urged on behalf of the petitioner that the sentence awarded by the Court-Martial to forfeit all arrears of pay and allowances and other public money due to him at the time of Cashiering did not fall within the powers of Court-Martial. This submission also cannot be accepted. It is specifically provided in Section 71 of the Army Act that the punishment may be inflicted in respect of offences committed by the persons subject to the Act and convicted by Court-Martial according to the scale laid down in clauses (a) to (1) of the said Act. Clause (k) of Section 71 provides for inflictment of punishment or forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal. This punishment awarded by the Court-Martial, therefore, does not fall outside the purview of punishments which could be inflicted under Section 71 of the Act.

21. It was also seriously contended on behalf of the petitioner that the contents of EX.b BBBB could not be read in evidence because the hand-written portion between the type-written and the signature of the petitioner was subsequently interpolated without the knowledge and consent of the petitioner. This is a question of appreciation of documentary evidence by the Court-Martial and it is not legal and proper to re-appreciate such evidence in exercise of Writ Jurisdiction by this Court. However, one cannot but hold that the document did not give any cause to believe that the hand-written portion was subsequently interpolated. If the typed matter was the only content which was contemplated by the petitioner to be binding on him he would not have left a big gap between the typed portion and his signature. The hand written portion does not appear to have been articulated in any manner at the instance of the respondents, which gives us a strong reason to believe that there was no substance in the contention raised by the petitioner that

the band-written portion was subsequently interpolated without his knowledge.

22. The averment made by the learned Counsel for the petitioner that the Confirming Authority had no power to revise the sentence or to send back the sentence for revision also does not stand substantiated by the provisions of the Army Act and the Rules made thereunder. Under Rule 68 with regard to revision, it is stated in sub-rule (3) that where the sentence alone is sent back for revision, the Court shall not revise the finding, which gives a clear indication of the power conferred on the Confirming Authority to send back for revision the sentence also. Section 160 of the Act also, as seen earlier, clearly provides in sub-section (1) that any finding or sentence of a Court-Martial which requires confirmation may be once revised by order of the Confirming Authority which also gives us a clear indication of the fact that 'the sentence' is included within the power of revision to be exercised by the Confirming Authority. There is, therefore, no irregularity or illegality in the order passed by the Confirming Authority with regard to sentence.

23. Under Sub-Section (2) of Section 164 of the Army Act, the petitioner is entitled to present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence, if he considers himself aggrieved by a finding or sentence of any Court-Martial which has been confirmed, and the Central Government, the Chief of Army Staff or any prescribed officer as the case may be may pass such order thereon as it or he thinks fit. The petitioner did avail of this remedy and it was communicated to him by letter dated 7-6-1995 that the petitioner's post-confirmation petition dated 9-6-1994 under the provision of AA Section 164(2) against the findings and sentence of GCM held at Golconda, Hyderabad from 22-11-93 to 7-5-94 has been considered by the Central Government and rejected as it lacked substance.

24. On the power of the Confirming Authority, the learned Counsel for the petitioner placed reliance on the decision of the Delhi High Court in *Nb/Sub Avtar Singh v. Union of India*, 1989 (4) SLR 579. In Para 22 thereof, it is observed that 'the Confirming Authority is from the hierarchy of administration, and in this case a Major General was posted as General Officer Commanding, Maharashtra and Gujarat area. He was admittedly an executive officer whereas the General Court

Martial exercised all the functions of a judicial body. It is in recognition of this position that the only power envisaged under Section 160 was that the Confirming Authority may direct that the order of Court Martial may be revised, and while doing so, may direct taking of additional evidence.'

25. In the case before us, it is alleged that the Confirming Authority failed to exercise his power under Section 164(1) of the Army Act on the pre-confirmation petition dated 26-3-1994 filed by the petitioner and that the Confirming Authority even before disposal of the said petition issued the proceedings dated 3-5-1994 calling upon the General Court Martial to re-assemble of 6-5-1994 to reconsider its finding on charge No. 1 and the sentence imposed on the petitioner. In my opinion, however, the steps taken by the Confirming Authority in the instant case were in no way contrary to the provisions of Section 160 of the Army Act. In the decision of the Delhi High Court in Avtar Singh's case (supra) also, the observation is made that the Confirming Authority may direct that the order of Court-Martial may be revised and while doing so may direct taking of additional evidence. The direction given by the Confirming Authority in the case before us does not travel outside the purview of Section 160 as stated above except that the point which requires for consideration in our case is whether reconsideration of the sentence awarded could lawfully form part of the directions which could be given by the Confirming Authority to the General Court-Martial. Under Section 158 of the Act, as discussed above, the Confirming Authority has been vested with power to mitigate or remit or commute punishment awarded by the Court-Martial and, therefore, when a sentence is directed to be revised by the Confirming Authority, it necessarily means that the Confirming Authority was of the opinion that the punishment awarded by the Court-Martial was not commensurate with the gravity of the offence. In that view of the matter, therefore, the direction given by the Confirming Authority to revise the sentence does not suffer from any infirmity.

26. On the other hand, the learned Counsel for the respondents pressed into service the decision of the Supreme Court in Major G.S. Sodhi v. Union of India, : 1991 CriLJ1947 wherein while dealing with the powers and duties of the Army authorities, the Supreme Court held that the procedure was meant to further the ends of justice and not to frustrate the same. It was not each and every kind of

defect preceding the trial that could affect the trial as such. The object and effect of the Rules should be considered in the context bearing in mind the general principle whether such an incomplete compliance had caused any prejudice to the delinquent officer. However, if there was any violation of mandatory rules, the necessary benefit of the same should be given to the delinquent. In Para 37 of the said decision, the Supreme Court observed that the Army Authorities are entrusted with certain powers and duties' under the Act which also enjoined on them certain important responsibilities particularly in the matter of holding the enquiries and trials. The Parliament in its wisdom in exercise of its powers under Article 33 has enacted this law and the officers are to be guided by factors like exigencies of service, maintenance of discipline in the army, speedier trial, the nature of the offence and the person against whom the offence is committed. Normally having regard to the high office they hold there should not be any scope to apprehend deliberate lapse or intentional omission on their part. The Supreme Court further observed that in the case before them, there was no violation of these Rules and at any rate no prejudice had been caused to the petitioner in his defence. The Supreme Court further pointed out that most of the main submissions were only about certain alleged lapses in constituting Court of inquiry, recording of summary of evidence, issuance of the charge sheets, convening order and that all these orders were not signed by a duly authorised officer and about confirmation and promulgation of the Court-Martial Findings and sentence and discrimination in awarding of sentence and held that even if it was assumed that there was some substance in these submissions, they would not affect the trial as such in which both the petitioners duly participated.

27. The principles enunciated by the Supreme Court in the G.S.Sodhi's case (supra) aptly go to the rescue of the respondents. What is emphatically attempted to be pointed out by the petitioner falls within the area circumscribed by the Supreme Court in the above decision inasmuch as the petitioner urged that the reconsideration of the charges and the sentence by the Court-Martial as directed by the Confirming Authority was based on no additional evidence and that reconsideration of sentence at least could not have been directed by the Confirming Authority as he was not empowered to do so. It is further urged that the Confirming Authority acted in a manner as if he had the power of judicial review

over the findings of the General Court Martial. Further, according to the learned Counsel for the petitioner, findings on the charge Nos. 2,3, and 4 were not such as could be borne out from the oral and documentary evidence which came on record and that the authorities such as Judge-Advocate, the General Court-Martial and the Confirming Authority were all biased against the petitioner and were motivated by prejudice against the petitioner in arriving at the finding of guilt. However, the petitioner is silent as to how and for what reason these authorities were biased against the petitioner. In fact there is hardly any material on record to raise even a presumption that any reason or cause existed which could have induced the authorities to take a biased view of the entire conduct of the petitioner. In fact the charges proved against the petitioner to the effect that he dishonestly misappropriated the sale proceeds amounting to Rs. 74,641/55 ps belonging to CSD canteen between 22-6-1991 and 26-11-1992 while performing the duties of the Commanding Officer-Cum-Accounts Officer of 2089 Field Ambulance as also the charge that between the afore-said period he misappropriated a sum of Rs.5,684-00 belonging to Non-CSD Canteen of the said Unit, are so serious in nature that none in the army discipline could be viewed lightly. The irregularities attempted to be pointed out in the proceedings were not of such an outrageous character that an inference could be drawn by the Court that such irregularities were intentionally committed with a view to falsely implicating the petitioner in such acts of misconduct. None is shown to have taken any undue interest in arriving at the finding of guilt of the petitioner. The ratio emerging from the decision of the Supreme Court in G.S. Sodhi 's case (supra) so aptly applies to the facts of the case before us that the petitioner could hardly be given the advantage of the observations made by the Delhi High Court in Avtar Singh 's case (supra).

28. The position of law being as stated above on exercise of judicial review nothing comes to surface which could produce any infirmity on the procedure followed by the respondents for the purpose of examining the charges levelled against the petitioner. No illegality appears to have been committed by the respondents and there appears to be a substantial compliance with the provisions of the [Army Act, 1950](#) and the Rules made thereunder in recording a finding of guilt by the concerned authority for the misconduct proved to have been committed by the petitioner. Sufficient opportunity had been given to the petitioner

at every stage of grievance procedure as laid down in the Act and Rules made thereunder and, therefore, there is no reason why any interference need be made with the impugned order. The main thrust of the petitioner's case that the officers who conducted the disciplinary proceedings were all biased against the petitioner, loses all force in the absence of any serious attempt, worth the name, on part of the petitioner to establish as to how and why they were biased against the petitioner. Once this allegation falls to the ground, nothing substantial remains to be considered by the Court for arriving at a conclusion different from the one which is drawn by the concerned authorities during the progress of the disciplinary proceedings against the petitioner. The charge of officers being biased is a frivolous charge without having been substantiated by any material on the record of the case.

29. Notwithstanding all what is stated above, I do believe that the additional punishment of forfeiting all arrears of pay and allowances and other public money due to the petitioner at the time of cashiering was not warranted under the facts and circumstances of the case. The General Court Martial has also not sufficiently and satisfactorily justified the same. The subsequent addition of this punishment makes the order quite harsh and not commensurate with the cause of justice. The sentence of cashiering was quite adequate. No aggravating factors have come to light so as to aggravate the quantum of punishment. I am, therefore, of the opinion that the additional punishment of forfeiting all arrears of pay and allowances, etc., need be deleted so as to serve the ends of justice.

30. In the result, therefore, it is hereby directed that the impugned order of sentence shall be confined to the following two sentences--

(i) To be cashiered; and

(ii) To forfeit four years of past service for the purpose of loss of pension

31. The Writ Petition is accordingly allowed partly. No costs.