

**Chandra Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Jul-23-2001

**Reported in :** 95(2002)DLT448

**Judge :** R.S. Sodhi, J.

**Acts :** [Constitution of India](#) - Article 226; Arms Act - Sections 52

**Appeal No. :** Crl. W.P. No. 590 of 1991

**Appellant :** Chandra Kumar

**Respondent :** State

**Advocate for Def. :** Jyoti Singh, Adv.

**Advocate for Pet/Ap. :** S.C. Maheshwari, Sr. Adv.,; Sandhya Goswami and;  
Jabar Sing

**Disposition :** Writ petition dismissed

**Judgement :**

ORDER

AND MILITARY

Army Act DISCIPLINE.

## Section 63

in that he,

at filed, on 17th Nov. 1988, improperly utilised for himself IAFT-1752-PA/53-869651 dated 15th Nov. 1988, single/return journey railway warrant from Jammu to New Delhi and back.'

3. The petitioner at the first instance made a grievance as to the constitution of the Court saying that the officers manning the same were subordinate to the Convening Officer against whom the petitioner had filed a statutory complaint and, therefore, he had no confidence in the Court. This objection was adjudicated upon by the Court and over-ruled vide its order dated 15th March, 1990. The petitioner chose not to carry his grievance any further instead participated in the proceedings till the very end. He challenged the same only by way of this writ petition in 1991, where inter alias he took grounds of bias based on his objections taken by him earlier before the Court.

4. I have heard learned Counsel for the petitioner who has strenuously argued that once the petitioner had shown lack of confidence in the composition of the Court, it was incumbent upon the Convening Officer to have attached him to another unit. Learned Counsel has also submitted that the defense of the petit (SIC) was handicapped inasmuch as a biased Court had not allowed him to produce (SIC) witness essential to his case.

5. I have carefully examined the record of the case. Undoubtedly, it is (SIC) within the purview of this Court to examine the sufficiency of evidence add (SIC) However, the correctness of the Court Martial, procedural error or any lapse (SIC) fairness could always be enquired into by way of judicial review. I have been (SIC) through the record of the case by learned Counsel for the respondent(SIC) submitted that the statutory complaint alleged to have been made by the petit (SIC) was against Commander 71, Sub Area, who at that time was Brig. I.S. Sahni (SIC) the Convening Officer of the present Court Martial was Brig. J.S. Phoolka. There (SIC) the contention of the learned Counsel that prejudice has been caused to him (SIC) convening of the Court is misfounded. From the record it appears that

(SIC) contention of the learned Counsel for the respondent is correct and that (SIC) petitioner's basis of this objection is factually erroneous. The next attack (SIC) learned Counsel for the petitioner is to his denial of defense inasmuch as transp(SIC) who transported his goods was not examined. That also is factually incorrect.(SIC)2 6, Sh. Satinder Pal Singh s/o Sh. Janak Singh has been produced by the petit (SIC) in his defense as the transporter who is alleged to have transported his goods (SIC) witness categorically states that only a receipt for transporting of goods was (SIC) but no goods were in fact transported. The Toll in charge has been examined as (SIC) 13 who sates that the trucks alleged to have carried the goods of the petitioner (SIC) namely, JKQ 3285 and JKR 9587 did not cross the check-posts of the (SIC) therefore, this contention of the petitioner is also baseless. The next conten(SIC) namely that he has been punished twice for use of LTC is denied by the respon (SIC) and the petitioner has not placed on record any order by which he was punish (SIC) the first instance. This also to my mind holds no water.

6. Having, therefore, examined the record of the case, in order to ascertain (SIC) fairness of the proceedings as also the legality thereof, I am of the firm opinion (SIC) the proceedings of the Court Martial sought to be challenged in this writ pe(SIC) suffers from no infirmity that calls for interference by the Court.

7. Crl. Writ Petition 590/1991 is dismissed.

8. Writ Petition dismissed.

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