

**EHIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 810/2025

Reserved on: 28.01.2026

Pronounced on: 11 .03.2026

Uploaded on: 12 .03.2026

Whether the operative part or full
judgment is pronounced: Full

Rajinder Singh

Petitioner

Through: - Ms Surinder Kour Sr. Advocate with
Mr. Michal Singh Dogra Advocate

vs

Union of India and others

Respondents

Through: - Mr Vishal Sharma DSGI
Mr. Eishan Dadichee CGSC.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE**

JUDGMENT

Sanjeev Kumar, J

1 This petition by the petitioner, filed under Article 226 of the Constitution of India, is directed against the order and judgment dated 20.01.2025 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu (hereinafter referred to as “the Tribunal”) in T.A. No. 01/2021 (SWP No. 1353/2004) titled *Rajinder Singh vs Union of India and others*, whereby the Tribunal has dismissed the T.A./petition filed

by the petitioner seeking quashment of Order No. 308/18/PC/98 dated 04.12.1998 issued by the respondents.

2 Briefly stated, the facts leading to the filing of this petition are that the petitioner was enrolled in the Army Medical Corps on 29.12.1992 and attested on 31.12.1994 as a Sepoy. In his short span of less than six (06) years of service, he was awarded three (03) red ink entries, including the punishment of Summary Court Martial, by different Commanding Officers of different units. On the allegation of misbehaviour and violation of the modesty of a lady officer, the petitioner was served with charges vide charge-sheet dated 21.11.1998 for commission of offence under Section 69 of the Army Act, 1950 (hereinafter referred to as “the Act”). The petitioner was tried by Summary Court Martial and, vide order dated 01.12.1998, was convicted and sentenced to rigorous imprisonment for a period of three years and dismissal from service in terms of order dated 04.12.1998. It is this order which was called in question by the petitioner before this Court in SWP No. 1353, which, on transfer to the Tribunal, was registered as T.A. No. 01/2021.

3 The impugned order of imposing punishment upon trial by Summary Court Martial was assailed by the petitioner on the ground that the Summary Court Martial was not convened as per the procedure prescribed by Section 120(2) of the Act and that there was no reference made to the Judge Advocate General’s Department under Regulation 359 of the Army Regulations. There were other allegations in the petition that the petitioner was not given fair treatment during the Summary Court Martial proceedings, inasmuch as he was neither

permitted to have a counsel or friend of his choice to defend him nor was he afforded a fair opportunity of being heard. The petitioner also contended before the Tribunal that the mandatory Court of Inquiry in terms of Rule 177 of the Army Rules was not conducted before ordering/convening the Summary Court Martial. It was also alleged that the plea of guilty was not recorded by following the procedure and safeguards prescribed under Rule 115 of the Army Rules. In short, the grievance of the petitioner before the Tribunal was that the entire proceedings, right from convening of the Summary Court Martial to recording of plea and awarding of sentence, were vitiated, being conducted in sheer violation of the Act and the Rules framed thereunder.

4 The T.A./petition was contested by the respondents herein by filing a detailed reply. It was contended that the Summary Court Martial was held as per the Rules and Regulations in vogue. The petitioner was charged under Section 69 of the Act, i.e., for committing a civil offence of using criminal force upon a woman with intent to outrage her modesty. The proceedings were initiated and concluded strictly as per the provisions of law and the petitioner never objected either to the convening of the Summary Court Martial or to the proceedings conducted therein. The petitioner never asked for copies of the proceedings during or after completion of the Court Martial proceedings. The petitioner was given full opportunity to defend the charge. The witnesses were recorded in his presence and he was given ample opportunity to cross-examine the witnesses, which he, however, declined. The summary of evidence was recorded as per Rule 23 of the

Army Rules, in which also he was given liberty to cross-examine each prosecution witness. It was specifically pleaded by the respondents in their reply affidavit that when the charge was read over to the petitioner, he pleaded guilty. The Court explained to him the effect of pleading guilty to the offence as per Army Rule 115(2), which the petitioner also signed. The petitioner, after having been explained the consequences of pleading guilty, signed the statement as “*the statement has been read over to me in the language I understood and I signed it as correct*”. It was thus contended that after having pleaded guilty to the charge voluntarily, the petitioner was seeking to raise the issue that the same was not correctly recorded. In short, all the contentions raised on behalf of the petitioner were refuted by the respondents and, to substantiate the averments made in the reply affidavit, the respondents also produced the original record of the Summary Court Martial.

5 The Tribunal, having considered the rival contentions and having gone through the original file of the Summary Court Martial, came to the conclusion that the contention of the petitioner that the Summary Court Martial was convened in violation of Section 120(2) of the Act was not correct, inasmuch as the order to try by Summary Court Martial was passed by the Officiating General Officer Commanding, 8 Mountain Division. Regarding violation of Regulation 359, it was opined by the Tribunal that from the original record it was apparent that a reference was made to the Judge Advocate General. There was, however, no adjudication made by the Tribunal with regard to recording of the plea of guilt. Be that as it may, the fact remains that the Tribunal did not agree with the grounds of challenge urged on

behalf of the petitioner and accordingly dismissed the T.A./petition in terms of its order and judgment impugned before us in these proceedings. Both the sides took similar stance as was taken by them before the Tribunal

6 Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the challenge of the petitioner to the order dated 01.12.1998, on the ground that the respondents had conducted the proceedings of Summary Court Martial *de hors* the procedure prescribed by Section 120(2) of the Act, has been rightly considered and dealt with by the Tribunal. As per Section 120 of the Act, the Summary Court Martial is empowered to try any offence punishable under the Act, subject, of course, to the provisions of sub-section (2) of Section 120 of the Act. In sub-section (2) of Section 120, it is clearly provided that unless there is grave reason for immediate action and reference can, without detriment to discipline, be made to the officer empowered to convene a District Court Martial or, on active service, a Summary General Court Martial for trial of the alleged offender, an officer holding a Summary Court Martial shall not conduct a trial for an offence punishable under Sections 34, 37 and 69, or any offence against the officer holding the Court without making reference to the District Court Martial or Summary General Court Martial, as the case may be.

7 In the instant case, it was the specific stand of the respondents that such reference was made and that the Summary Court Martial was held pursuant to the orders passed by the officiating General Officer Commanding, 18 Mountain Division, who is a

competent authority to convene a District Court Martial or a Summary Court Martial. The Tribunal, however, failed to consider a specific ground of challenge urged by the petitioner, that the plea of guilty recorded by the Summary Court Martial was de hors the procedure and safeguards prescribed under Section 120(2) of the Act read with Army Rule 115(2). Although the respondents in their reply affidavit have unequivocally pleaded that when the charge was read over to the petitioner he pleaded guilty and that the Court explained to him the effect of pleading guilty to the offence as required under Army Rule 115(2), which the petitioner also signed, it is further pleaded that the petitioner, after having been explained the consequences of pleading guilty, signed the statement as “*Statement has been read over to me in the language I understand and I signed it as correct.*” This assertion made by the respondents in their reply affidavit has been specifically rebutted by the petitioner by filing a rejoinder.

8 With a view to ascertain whether the plea of guilty recorded by the Summary Court Martial, which led to the passing of the order of penalty against the petitioner, was in fact recorded in compliance with Army Rule 115(2), we had called upon Mr. Vishal Sharma to produce the original record. Despite waiting for a considerable period, the record has not been produced and the requisite information has not been shared by the respondents. The matter was reserved on 28.01.2026 awaiting production of the record, but despite having waited for more than four weeks, the same has not been provided. In these circumstances, we are constrained to hold that the respondents have not recorded the plea of guilty of the petitioner in

consonance with law, more particularly in conformity with Section 120(2) of the Act read with Army Rule 115(2), and probably for this reason the record has been withheld from us.

9 In view of the aforesaid, we are left with no option but to allow this petition and set aside the order impugned, passed by the Tribunal. Accordingly, the petition is allowed, the TA of the petitioner is accepted, and Order No. 308/18/PC dated 04.12.1998 is quashed. The petitioner is directed to be reinstated forthwith. The respondents, however, shall be at liberty to proceed with the Summary Court Martial as if there is no plea of guilt of the petitioner recorded and conclude the trial within a reasonable period after following the relevant provisions of the Army Act and the Rules framed thereunder. The entitlement of the petitioner to receive arrears of salary from the date of his dismissal till his reinstatement in terms of this judgment shall depend upon the result of the Summary Court Martial proceedings that may be held by the respondents in terms of the directions issued above. We further provide that in case the Summary Court Martial proceedings are not initiated, or the same result in exoneration of the petitioner, he shall be entitled to salary with effect from the date he was dismissed from service till he is reinstated in terms of this judgment.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Whether the order is speaking: Yes

Whether the order is reportable: Yes

Jammu
Sanjeev
11 .03.2026