



2025:DHC:11368-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1864/2025**

EX. MAJOR GENERAL M.S. JASWALPetitioner

Through: Mr. Shree Prakash Sinha, Mr.
Anand Kumar, Mr. Gurpreet Das, Ms.
Asmita and Mr. Rishabh Kumar, Advocates

versus

UNION OF INDIA AND ORSRespondents

Through: Ms. Avshreya Pratap Singh
Rudy, CGSC and Ms. Usha Jamnal, Mr.
Mohd. Junaid Mahmood, Ms. Prajna
Pandita, Advocates for UOI with Major
Anish Muralidhar Army

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CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

06.12.2025

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C. HARI SHANKAR, J.

1. The petitioner Ex. Major General M S Jaswal was subjected to General Court Martial¹ proceedings under Section 109 of the Army Act 1950, which culminated in an order dated 23 December 2018 finding the petitioner guilty of having committed offences under Sections 354A of the Indian Penal Code² read with Section 45 of the Army Act 1950, and the imposition, consequent thereto, of punishment of dismissal from service.
2. The petitioner had, during the GCM proceedings, raised a challenge to the jurisdiction of GCM to proceed against the petitioner.
3. The decision taken on the said request was not communicated to the petitioner as soon as it was taken. The petitioner, in these circumstances, approached the Armed Forces Tribunal³ by way of OA 1631/2018, praying that he be provided copies of order/orders passed by the GCM rejecting his objection to jurisdiction.
4. While the said OA was pending, the GCM proceedings concluded on 23 December 2018, as already noted hereinabove.
5. The petitioner, thereafter, approached the Tribunal by way of a second OA, i.e. OA 191/2019, praying that the respondent be directed

¹ "GCM" hereinafter

² "IPC" hereinafter

³ "Tribunal" hereinafter



2025:DHC:11368-DB



to provide him certified copies of the original manuscript of the court martial proceedings and the true certified copy of the typed copy of the court martial proceedings.

6. Thus, the prayers in these two OAs were distinct and different. Both the OAs have come to be dismissed by the Tribunal by separate orders dated 24 May 2019.

7. Against the orders dated 24 May 2019 of the Tribunal in OA 1631/2018 and OA 191/2019, the petitioner filed review applications, being RA 27/2019 and RA 28/2019 respectively.

8. Both these review applications were dismissed by the Tribunal by separate orders dated 26 August 2021.

9. The petitioner initially approached the Supreme Court, challenging the orders passed by the Tribunal in OAs and RAs. Orders dated 24 May 2019 in OA 1631/2018 and 26 August 2021 in RA 27/2019 were challenged in Civil Appeals 2207/2022 and 2208/2022, whereas the judgments in OA 191/2019 and RA 28/2019 were challenged in Civil Appeals in 2209/2022 and 2210/2022.

10. By order dated 29 November 2024, the Supreme Court directed its Registry to transfer the records of the Civil Appeals to this Court for decision, in view of the judgment of the Supreme Court in *Union*



*of India v. Parashotam Dass*⁴.

11. Subsequent thereto, the Civil Appeals were re-numbered by the Registry of this Court as WP(C) 1864/2025 and WP(C) 1865/2025. WP(C) 1864/2025 challenges order dated 24 May 2019 in OA 191/2019 and order dated 26 August 2021 in RA 28/2019, whereas WP(C) 1865/2025 challenges order dated 24 May 2019 in OA 1631/2018 and order dated 26 August 2021 in RA 27/2019 respectively.

12. We have heard Mr. Shree Prakash Sinha, learned Counsel for the petitioner and Ms. Avshreya Pratap Singh Rudy, learned CGSC for the respondents, at length.

Impugned judgments and orders of the Tribunal

13. Judgment dated 24 May 2019 in OA 1631/2018 and order dated 26 August 2021 in RA 27/2019

13.1 In its judgment dated 24 May 2019 in OA 1631/2018, the Tribunal has noted that grievance of the petitioner, in the OA, was that he had not been provided certified copies of order dated 14 July 2018, whereby the GCM had rejected the special plea of jurisdiction raised by the respondent in terms of Rule 51⁵ of the Army Rules. The

⁴ (2025) 5 SCC 786

⁵ 51. **Special plea to the jurisdiction.** –

(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court considers that anything stated in such plea shows that the court has not jurisdiction it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and, any address by or on behalf of the accused and reply by the prosecutor in reference thereto.



petitioner also sought copies of the day to day proceedings of the GCM which, too, had not been provided to him.

14. Before the Tribunal, following submissions were advanced by the petitioner, as noted in the order passed by the Tribunal:

- (i) Section 133⁶ of the Army Act made the provisions of the Evidence Act applicable both to the proceedings of the GCM as well as to the Army Act itself.
- (ii) Section 152⁷ of the Army Act also deemed proceedings of the GCM to be judicial proceedings. They were, therefore, subject to the provisions of the Evidence Act.
- (iii) The proceedings of the GCM were, therefore, “public documents” for the purposes of Sections 74⁸ and 76⁹ of the

(2) If the court overrules the special plea, it shall proceed with the trial.

(3) If the court allows the special plea, it shall record its decision, and the reasons for it, and report it to the convening authority and adjourn; such decision, shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

⁶ 133. **General rule as to evidence.** – The Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act apply to all proceeding before a court-martial.

⁷ 152. **Powers of court-martial in relation to proceedings under this Act.** – Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and the court-martial shall be deemed to be a court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

⁸ 74. **Public documents.** – The following documents are public documents—

- (1) documents forming the acts or records of the acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;
- (2) public records kept in any State of private documents.

⁹ 76. **Certified copies of public documents.** – Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation. – Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.



Evidence Act. These provisions, therefore, entitled the petitioner to certified copies of the proceedings of the GCM.

15. The respondent, on the other hand, placed reliance, before the Tribunal, on the judgments of the Supreme Court in *Union of India v. G.S. Bajwa*¹⁰ and *S.N. Mukherjee v. Union of India*¹¹.

16. The Tribunal rejected the submissions of the petitioner. While accepting the contention that, under Section 15(2)¹² of the Armed Forces Tribunal Act, 2007¹³, the petitioner was entitled to challenge any order passed by the GCM, the Tribunal held that a certified copy of the order proposed to be challenged was not *sine qua non* to approach the Tribunal.

17. Insofar as the reliance, by the petitioner, on the provisions of the Evidence Act is concerned, the Tribunal held, in the impugned judgment, that Section 39 of the AFT Act gave overriding effect, to its provisions, over the provisions of the Evidence Act. Even so, it was noticed that the petitioner was entitled to inspect the record of the GCM, take copies of any orders or decisions contained therein and, on the basis of such copies, could approach the Tribunal under Section 15(1) of the AFT Act. The Tribunal further found the case to be covered by the judgments of the Supreme Court in *G.S. Bajwa* and *S.N. Mukherjee*. In *Bajwa*, it was noted that the Supreme Court had

¹⁰ (2003) 9 SCC 630

¹¹ (1990) 4 SCC 594

¹² (2) Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.

¹³ "AFT Act" hereinafter



held that right to inspect the record of the GCM would suffice as a substitute for being provided certified copy thereof. The attempt of the petitioner to distinguish the decision in **Bajwa** was found not to be tenable. Section 76 of the Evidence Act, it was held, could not make any difference to the applicability of the law laid down in **Bajwa**.

18. The Tribunal further held that the respondents had correctly relied on Rule 92 of the Army Rules, which required GCM proceedings to be signed by the Presiding Officer only at the end of the GCM, at which time the Charged Officer would be provided a copy of the record of the GCM so as to enable him to exercise his statutory right to challenge the proceedings, if so advised.

19. The submission that the records of the GCM might have been tampered with was found to be without any substance and unsupported by any material and was, therefore, rejected. In this context, the Tribunal also relied on Section 114(e) of the Evidence Act, which presumed all official acts to be correctly performed. Inasmuch as the GCM was exercising judicial functions, the Tribunal held that its record was presumed to be correct, in view of Section 114(e) of the Evidence Act.

20. Following the above discussion, the Tribunal concluded thus:

“27. Having regard to the aforesaid analysis of the provisions of law and the averments made, we conclude as under :-

1. That the appellant while making the allegations of tempering with the documents must discharge the initial



onus before the respondents are called upon to respond and look into this, otherwise this would be considered only as an allegation made without any basis to sidetrack the main trial.

2. The court-martial proceedings are open proceedings unless the entry thereof is regulated.

3. The provisions of Evidence Act are broadly applicable but in case of special nature of the Tribunal, the provisions of Evidence Act will have overriding effect on Sec 39 of the AFT Act and therefore in the absence of Rules for providing the certified copy, no certified copy can be claimed. The applicant can inspect the record and obtain the copy. The signed copy of the entire court martial proceedings are to be provided after the conclusion of the court-martial (AR 9).

4. Supply of copy of the order or decision of the court-martial or the proceedings thereof cannot be treated as violative of Article 21 so long as the appellant inspects or is given inspection of the court proceedings.

5. The appellant is entitled to the signed copy only after conclusion of trial and before that he may only inspect the record. This principle has been upheld by Hon'ble Supreme Court in *Bajwa's case (supra)* in *S.N. Mukherjee's case* as sufficient compliance of principle of natural justice."

21. The petitioner sought review of the aforesaid judgment dated 24 May 2019 by way of RA 27/2019, which was dismissed by order dated 26 August 2021, both on maintainability as well as on merits.

22. Aggrieved by the said orders, the petitioner is before this Court.

Re. WP (C) 1865/2025

Rival submissions of the appellant and our findings thereon



23. Learned Counsel for the parties broadly reiterated the contentions advanced before the Tribunal. They have also filed written submissions.

24. The petition, in our view, is liable to be dismissed even on the basis of Rule 147 of the Army Rules read with the judgments of the Supreme Court in *Bajwa* and *Mukherjee*.

25. The submission of the petitioner, as articulated before the Tribunal, and before us by Mr. Sinha, is that the petitioner was entitled, during the proceedings in the GCM, to be provided certified copies of the day to day proceedings in the GCM and, more particularly, the order dated 14 July 2018, whereby the GCM had rejected the petitioner's "special plea to jurisdiction".

26. Rule 147 of the Army Rules

26.1 Rule 147 of the Army Rules specifically deals with the right of the officer to copies of proceedings. It states, in no uncertain terms, that a person tried by a Court Martial, shall be entitled, on request in writing to the Court, to be supplied the copy of the GCM proceedings within a reasonable time.

26.2 In the present case, there was no request made in writing by the petitioner to be provided copies of any of the records of the GCM including the decision dated 14 July 2018. No copies of any document



can be sought on an oral request, in view of the express words in Rule 147.

26.3 Moreover, Rule 147 permits the officer being tried to copies of the GCM proceedings only after the proceedings have been signed by the Presiding Officer.

27. Rule 67(2) of the Army Rules

Rule 67(2)¹⁴ of the Army Rules specifically requires the Presiding Officer to date and sign the sentence pronounced *after conclusion of the GCM proceedings*, and provides that such signature would authenticate the whole of the proceedings. There is, therefore, no requirement of the Presiding Officer of the GCM signing day to day proceedings, or even any interim decision taken during the course of the GCM, including the decision on the special plea of jurisdiction under Rule 51 of the Army Rules.

28. Rule 62(1) of the Army Rules

Similarly, Rule 62(1)¹⁵ also requires the entire record of the GCM,

¹⁴ **67. Announcement of sentence and signing and transmission of proceedings. –**

(1) The sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The sentence will be announced as subject to confirmation.

(2) Upon the court awarding the sentence, the presiding officer shall date and sign the sentence and such signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the Judge-Advocate (if any), shall at once be transmitted for confirmation.

¹⁵ **62. Form, record and announcement of finding. –**

(1) The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded as finding of “Guilty” or of “Not Guilty”. After recording the finding on each charge, the court shall give brief reasons in support thereof. The Judge-Advocate or, if there is none, the presiding officer shall record or cause to be recorded such



which includes the finding of every charge against the Charged Officer and the reasons for the findings, to be signed and dated only at the end of the proceedings.

29. Rule 147 of the Army Rules

Expressio unius est exclusio alterius is an elementary principle of interpretation of statutes, and envisages that, where the statute expressly provides for something, the alternate would impliedly be excluded¹⁶. By expressly providing, in Rule 147, that the Charged Officer would be entitled to copies of the proceedings of the GCM only after they are signed by the Presiding Officer and, by Rule 67(2) that the Presiding Officer would sign the proceedings at the stage of announcement of sentence, the Rule impliedly provides that the Charged Officer would not be entitled to copies of the proceedings at any earlier stage.

30. As such, it is clear that the Charged Officer has no right to seek copies of the proceedings of the GCM till they are concluded, the sentence is pronounced and the proceedings are thereupon signed by the Presiding Officer.

31. Rule 93 of the Army Rules

brief reasons in the proceedings. The above record shall be signed and dated by the presiding officer and the Judge-Advocate, if any.

¹⁶ Refer **Rakesh Kumar Verma v. HDFC Bank Ltd**, AIR 2025 SC 1917, **State of Tamil Nadu v. Governor of Tamil Nadu**, (2025) 8 SCC 1, **Sharmad v. State of Kerala**, 2025 SCC OnLine SC 71, among others



It is not, however, as though an officer is required to remain oblivious of the GCM proceedings during their continuation. Rule 93¹⁷ of the Army Rules permits the inspection of the proceedings of the GCM at any reasonable time. The GCM had, on the petitioner's oral request for being provided certified copies of its proceedings as well as its decision on the petitioner's special plea to jurisdiction, specifically ordered, on 14 July 2018 itself, that, while Rule 147 of the Army Rules did not permit providing copies of the proceedings of the GCM till they were concluded and signed by the Presiding Officer, the petitioner was entitled to inspect the proceedings and make a record thereof. This decision was entirely in accordance with the provisions of the Army Rules and was, therefore, unexceptionable.

32. The petitioner has not chosen to challenge either Rule 147 or Rule 93 of the Army Rules, or any other statutory provisions. They, therefore, bind the petitioner.

33. *Bajwa*

33.1 The issue, as we have noted, is squarely covered by the judgment of the Supreme Court in *Bajwa*. The Tribunal has correctly extracted, in this context, paras 37 to 40 of *Bajwa*, which read thus:

“37. The next grievance of the respondent which found favour with the High Court is that he was not supplied copies of the

¹⁷ 93. **Custody and inspection of proceedings.** – The proceedings shall be deemed to be in the custody of the Judge-Advocate (if any), or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable time before the court is closed to consider the finding.



proceedings everyday, though he had repeatedly asked for the same. ' The appellant pointed out that neither under the Air Force Act, 1950 nor the Air Force Rules, 1969 is there any provision for supply of copies of the evidence and the proceedings everyday. But there is a provision which permits the charged officer to inspect the record of proceedings. Therefore, the request for supply of copies everyday was not tenable. The High Court held that merely because there are no provisions in the Act and the Rules to supply copies, the court cannot deny the copies of evidence and the record of proceedings to the accused and such denial amounts to denial of reasonable opportunity to defend himself, as it was in violation of the principles of natural justice.

38. Rule 125 of the Air Force Rules, 1969 provides as follows:-

"125. Right of person tried to copies of proceedings - Every person tried by a Court Martial shall be entitled on demand, at any time after the confirmation of the finding and sentence and before the proceedings are destroyed, to obtain free of cost from the officer or person having the custody of the proceedings, a copy therefore, including the proceedings upon revision, if any."

39. Rule 100 is as follows:

"100. Custody and inspection of proceedings – The proceedings shall be deemed to be in the custody of the Judge Advocate (if any), or if there is none, of the presiding officer, but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable times before the court is closed, to consider the finding.

40. *It will thus be seen that there is a specific provision in the Rules which provides for copies of the proceedings to the person tried by the Court Martial free of cost at any time after the confirmation of the finding and sentence and before the proceedings are destroyed. Clearly, therefore, the respondent was not entitled to a copy of the proceedings day to day as claimed by him. However, Rule 100 in terms provides that the proceedings may be inspected by the accused at all reasonable times before the court is closed to consider the finding. Nothing, therefore, prevented the respondent from inspecting the proceedings and preparing his defence, Rule 100 itself incorporates the principle of natural justice by giving to the respondent an opportunity to go through proceedings and for this purpose to inspect the same at all reasonable times. This meets the requirement of the principles of*



natural justice and the respondent cannot complain on the ground that he was not given a copy of the proceedings day to day. The High Court was, therefore, clearly wrong in coming to the conclusion that the principles of natural justice were violated by non-supply of copies of proceedings day to day.”

(Emphasis supplied)

33.2 Rule 125 of the Air Force Rules, as it existed and was under consideration in *Bajwa*, was, thereafter, amended by SRO 83 dated 19 December 1970 and presently reads thus:

“125. Right of person tried to copies of proceedings. – Every person tried by a court-martial shall, after the proceedings have been signed by the Presiding Officer and where applicable, by the Judge-Advocate, and before they are destroyed, on a request made by such person in writing for the supply of a copy of such proceedings, be furnished within a reasonable time and free of cost a copy thereof including the proceedings upon revision, if any.”

A comparison of the pre-amended Rule 125 of the Air Force Rules, which was under consideration before the Supreme Court in *Bajwa*, and the amended Rule 125 of the Air Force Rules, discloses that the words which relate to the stage at which the copies could be provided were altered. While the pre-amended Rule 125 entitled the Charged Officer to seek and obtain copies of the GCM proceedings “at any time after the confirmation of the finding and sentence and before the proceedings are destroyed”, the amended Rule 125 permits the officer to seek and obtain copies “after the proceedings have been signed by the Presiding Officer and where applicable by the Judge Advocate”. The amended Rule 125 of the Air Force Rules is similar to the present Rule 147 of the Army Rules (which, we may note, was itself amended by SRO 169 dated 15 May 1987). The presently existing Rule 125 of



the Air Force Rules and Rule 147 of the Army Rules are, therefore, substantially similar.

33.3 Mr. Sinha sought to emphasise this fact in an attempt to distinguish **Bajwa**. He pointed out that Rule 125 of the Air Force Rules, which was under consideration in **Bajwa**, was later amended, and that it is the amended rule which resonates with Rule 147 of the Army Rules.

33.4 Having considered this submission and in the light of the pre-amended and amended Rule 125 of the Air Force Rules, we are of the opinion that the amendment does not really alter the applicability of the *ratio decidendi* of the judgment in **Bajwa**. The stipulation that the copies of the proceedings could be sought and obtained after confirmation of the finding and sentence, and the stipulation that they could be sought and obtained after the proceedings are signed by the Presiding Officer, amount to the same thing, in view of the Rules 62(1) and 67(2), which requires the Presiding Officer to sign the proceedings after pronouncing sentence.

34. Mukherjee

The following paragraph from the decision in **S.N. Mukherjee** reiterates the ratio of **Bajwa** and has, therefore, also been rightly relied upon by the Tribunal:

“Rule 147 of the rules also lends support to this view. In the said



rule it is laid down that every person tried by a court martial shall be entitled on demand, any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceeding a copy thereof, including the proceedings upon revision, if any. This rule envisages that the copies of proceedings of a court martial are to be supplied only after confirmation of the finding and sentence and that there is no right to obtain the copies of the proceedings till the finding and sentence have been confirmed. This means that the appellant cannot make a grievance about non-supply of the copies of the proceedings of the court martial and consequent denial of his right to make a representation to the confirming authority against findings and sentence of the court martial before the confirmation of the said finding and sentence.”

35. Mr. Sinha has not, therefore, been able to satisfactorily dislodge the applicability, to the issue before us, of the principles contained in *Bajwa* and *Mukherjee*.

36. Sections 74 of the Evidence Act and Section 133 of the Army Act

36.1 As a fall back argument, Mr. Sinha sought to submit that *Bajwa* and *Mukherjee* would not apply because they do not consider Section 74 of the Evidence Act. He submits that, as the proceedings of the GCM are “public documents” within the meaning of Section 74(1)(ii) and (iii) of the Evidence Act, the petitioner was entitled to copies thereof under Section 76 thereof.

36.2 Mr. Sinha’s contention cannot succeed because Section 133 of the Army Act, which makes the provisions of the Evidence Act applicable to courts-martial, is expressly made “*subject to the provisions of this Act*”. This would, by implication, make the



applicability of the Evidence Act also subject to the provisions of the Army Rules, as they stand promulgated in exercise of the power to frame Rules as conferred by Section 191 of the Army Act. It is trite that Rules, framed in exercise of the power conferred by the Act in that regard, are to be treated as part of the Act.¹⁸

36.3 Ergo, Sections 74 and 76 of the Evidence Act cannot be invoked so as to defeat the provisions of Rules 147 and 93, read with Rules 62(1) and 67(2), of the Army Rules.

36.4 We may, however, observe, here that the Tribunal appears to have fallen into slight error in para 20 of the impugned judgment in the following finding, while addressing this issue:

“...Section 39 gives overriding effect to the provisions of the Army Act. Thus, the provisions of the Evidence Act would be subservient to the Army Act and the applicant cannot claim copies as a matter of right...”

36.5 These findings do not appear to be correct in law. The reference to Section 39 appears to be a reference to Section 39 of the AFT Act. By virtue of Section 39 of the AFT Act, the AFT Act has overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. This would make the provisions of the Evidence Act, insofar as they may be inconsistent with the provisions of the AFT Act, inapplicable, but would not affect the applicability of the Evidence Act vis-a-vis the provisions of the Army Act.

¹⁸ Refer **Chief Forest Conservator v. Nisar Khan**, (2003) 4 SCC 595



36.6 Nonetheless, as we have found that Sections 74 and 76 of the Evidence Act cannot be pressed into service by the petitioner in view of Section 133 of the Army Act, this error in the order of the Tribunal does not really impact our final conclusion.

37. The sequitur of the above discussion is that Mr. Sinha's submission that his client was entitled to be provided copies of the record of the GCM, including the order dated 14 July 2018, at any stage of the proceedings prior to their conclusion, pronouncement of sentence and signatures, thereupon, of the Presiding Officer on the proceedings, must fail.

38. Re. "insufficiency" of Rule 93 of the Army Rules

38.1 Mr. Sinha sought to contend that the facility of inspection of the documents of the record, as permitted in Rule 93 of the Army Rules was no effective substitute to being provided certified copies, as the record is voluminous, and it is extremely difficult, if not impossible, to take down all the orders and decisions which the officer may desire to challenge. There is no occasion for us to examine this submission, as the petitioner has not chosen to challenge any of the proceedings of the Army Act or the Army Rules, including Rule 147 or Rule 93.

38.2 Besides, it cannot be said that these provisions subject the officer to any lasting prejudice, as the charged officer would be entitled to copies of the record after sentence is pronounced and the Presiding Officer has signed the record. At the worst, therefore, the



stage at which the officer can challenge the record would only be deferred. The right to challenge the GCM proceedings is not lost.

38.3 In any event, as the learned Tribunal correctly observes, the Supreme Court, in *Bajwa*, held Rule 100 of the Air Force Rules, which is *pari materia* with Rule 93 of the Army Rules, to be sufficient in this regard. The issue is, therefore, not *res integra*.

39. Mr. Sinha also sought to raise certain subsidiary arguments, which were basically only fall back submissions, and which, we feel, lack substance. We may, however, for the sake of completion, refer to them.

40. Rule 80-A of the Army Rules

Mr. Sinha placed reliance on Rule 80-A¹⁹ of the Army Rules. We find no relevance, to the present proceedings, of the said Rule. Rule 80-A merely states that proceedings of the GCM would be deemed to be public proceedings and would be held in a place to which the public would have access, subject to the discretion of the GCM to restrict access in terms of the proviso to the said rule.

41. Rules 6 and 76 of the Army Rules

¹⁹ **80-A. Courts-martial to be public.** – Subject to Rule 80, the place in which a court-martial is held for the purpose of trying an offence under the Act shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that if the court is satisfied that it is necessary or expedient in the public interest or for the ends of justice so to do, the court may at any stage of the trial of any particular case order that the public generally or any portion thereof or any particular person shall not have access to, or be or remain in, the place in which the court held.



Mr. Sinha also cited Rules 6²⁰ and Rule 76²¹ of the Army Rules which, too, are reproduced in the footnote hereunder and have no significance to the controversy at hand.

42. Section 15(2) of the AFT Act

Mr. Sinha further cited Section 15 of the AFT Act, which deals with the jurisdiction, powers and authority of the AFT in appeals against GCMs. The impugned judgment has taken note of this provision. Section 15(2) of the AFT Act, entitles any person, aggrieved by an order, decision, finding or sentence passed by the court martial, to prefer an appeal in such form, manner and within such time as may be prescribed. The Tribunal has correctly held that there is no provision in the AFT Act which requires the appeal to be accompanied by a certified copy of the order under challenge. While the right of the Officer to challenge any part of the proceedings of the GCM, including the order passed on the special plea on jurisdiction cannot, therefore, be gainsaid, Section 15 of the AFT Act does not confer, on the officer, a right to be provided a certified copy of the proceedings of the GCM even before he is entitled to the said proceedings in terms

²⁰ 6. **Cases unprovided for.** – In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as appears to it to be just and proper.

²¹ 76. **Responsibility of presiding officer.** –

(1) The presiding officer is responsible for the trial being conducted in proper order, and in accordance with the Act, rules made thereunder and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.



of Rule 147 of the Army Rules. In the event that the officer decides to challenge the proceedings even before the proceedings come to an end, he would have to inspect the proceedings under Rule 93 and raise a challenge on the basis of the copy of the proceedings as transcribed by him.

43. The sequitur

This is the scheme of the provisions as they emerged from the Army Act and the AFT Act. Inasmuch as none of the provisions are under challenge before us, or were under challenge before the Tribunal, we are not required to consider the reasonability thereof.

Conclusion

44. In view of the aforesaid discussion, there is no substance in the challenge, by the petitioner, to the order dated 24 May 2019 passed by the learned Tribunal in OA 1631/2018 or the order dated 26 August 2021 whereby the Tribunal has dismissed the RA 27/2019 preferred thereagainst.

Re. WP (C) 1864 /2025

45. This writ petition challenges the judgment of the Tribunal, pronounced on the same date as the judgment under challenge in WP (C) 1865/2025, but delivered in OA 191/2019 which was preferred after sentence had been pronounced by the GCM.



46. As we have already noted in para 6 *supra*, the prayers of the petitioner in OA 191/2019 were distinct and different from the prayers in OA 1631/2018. There is a fundamental difference between the entitlement of the Charged Officer to copies of the GCM proceedings while they are continuing, which was the claim in OA 1631/2018, and the right of the Charged Officer to copies of the record after the proceedings are complete and sentence is pronounced, which was subject matter of the claim in OA 191/2019.

47. *Prima facie*, Rule 147 of the Army Rules would apply in the former case, but may not apply in the latter.

48. We, therefore, are of the opinion that the learned Tribunal was not justified in disposing of OA 191/2019, as it has in para 14 of the judgment under challenge, merely on the ground that the issue was identical to that which was decided by it in OA 1631/2018.

49. Accordingly, we set aside order dated 24 May 2019 passed by the learned Tribunal in OA 191/2019 as well as order dated 26 August 2021 passed by the Tribunal in RA 28/2019. OA 191/2019 stands remitted to the Tribunal for decision afresh.

50. In order to expedite matters, we direct the parties to appear before the Tribunal on 19 December 2025.

51. Learned counsel for the parties undertake not to take any



2025:DHC:11368-DB



adjournment from the Tribunal on the said date.

52. Both sides would also be at liberty to place on record their respective written submissions not exceeding five pages each, after exchanging copies with each other, at least 48 hours in advance of the next date of hearing before the Tribunal.

53. The petition stands disposed of, in the aforesaid terms.

54. Let a copy of this judgment be e-mailed to learned Counsel for the parties.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 6, 2025*/yg/dsn/ar/aky*