[2012] 11 S.C.R. 440

A

UNION OF INDIA & ORS.

v.

DINESH PRASAD

(Civil Appeal No. 1961 of 2010)

B

OCTOBER 30, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

Army Act, 1950 – s.116 – Respondent, washerman/ rifleman in the Assam Rifles, charge-sheeted for remaining C *absent without leave for more than two years – Dismissal of respondent by summary court-martial – Challenged, on ground of violation of the principles of natural justice – Competence of the commanding officer of the respondent, who had signed and issued the charge sheet, to convene and* D *conduct the summary court-martial against the respondent questioned – High Court held that the summary court-martial proceedings held against the respondent were vitiated on account of likelihood of bias, and thus, set aside his dismissal – On appeal, held: Col. 'S', the commanding officer of the* E *respondent, did not suffer from any disability, ineligibility or disqualification to serve on the summary court-martial to try the respondent despite the fact that he had signed and issued the charge sheet against the respondent – As a matter of fact, the competence or eligibility of Col. 'S' to serve on the* F *summary court-martial for trial of the respondent was not at all put in issue by the respondent in the entire writ petition – It was only in the course of arguments before the High Court that such a submission was made on behalf of the respondent – No plea of actual or likelihood of bias was raised in the writ* G *petition – There was also no plea taken in the writ petition that the respondent was denied fair trial in the course of summary court-martial – Further, and more importantly, High Court overlooked and ignored the statutory provisions – Respondent was served with the charge sheet which was in*

H

conformity with the Army Rules and the Army Act – Neither constitution of the summary court-martial nor the procedure followed by that court could be said to suffer from any illegality – There was no violation of principles of natural justice – Respondent pleaded guilty before the summary court-martial and the summary court-martial found him guilty – It was only then that the order of dismissal of respondent was passed – The order of dismissal, in the facts and circumstances of the case, could not be said to be disproportionate or oppressive or founded on extraneous consideration – Army Rules, 1954 – Rule 31 and 39.

Army Act, 1950 – s.108 – Court-martial – Kinds of – Held: The courts-martial are of four kinds, (a) general court-martial; (b) district court-martial; (c) summary general court-martial; and (d) summary court-martial.

The respondent was a washerman/rifleman in the Assam Rifles. While in active service, he unauthorizedly remained absent for 808 days. He was served with a charge sheet under Section 39(a) of the Army Act, 1950 and a summary court-martial was constituted to try him. The respondent pleaded guilty whereafter the summary court-martial passed order dismissing respondent from service. The punishment of dismissal was confirmed by the Reviewing Officer.

The respondent filed writ petition challenging the punishment of dismissal. He explained in the writ petition the reason for his absence stating that he had lost his mental balance while in service and was suffering from mental depression. However, at the time of arguments before a Single Judge of the High Court, he submitted that the very Commandant of the Battalion, who had signed and issued the charge sheet to him, convened and presided over the summary court-martial and on conclusion thereof the punishment of dismissal from service was imposed, which vitiated the court-martial

A proceedings as the respondent was denied a fair trial.

The Single Judge held that while issuing a charge sheet the Commandant had tentatively made up his mind that there was some material against the delinquent and accordingly, after having issued charge sheet, the B Commandant ought not to have convened the court-martial and in any event ought not to have conducted the proceedings of the court-martial leading to the dismissal of respondent. The Single Judge held that in the facts of the case, the proceedings of the summary court-martial C held against the respondent were vitiated on account of likelihood of bias and accordingly set aside his dismissal. The Division Bench of the High Court declined to interfere with the conclusion reached by the Single Judge, and therefore the instant appeal.

D

Allowing the appeal, the Court

HELD: 1. Section 3(v) of the Army Act, 1950 defines 'commanding officer'. Section 108 of the Army Act describes the kinds of courts-martial. Section 116 E provides that the summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court. As per sub-section (2) of Section 116, the proceedings shall be attended throughout by two F other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed. Section 71 provides for punishments awardable by courts-martial. One of the punishments awardable by the courts-martial is dismissal G of the delinquent from service. [Paras 6, 9, 10 and 11] [448-F; 450-C-F-G]

2. The Army Rules, 1954 were framed by the Central Government in exercise of its powers under Section 191 for the purposes of carrying into effect the provisions of H the Army Act. Rule 31 of the Army Rules provides that the

charge sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature. Rule 39 deals with ineligibility and disqualification of officers for court-martial. Rules 106 to 133 of the Army Rules provide for the proceedings for conduct of summary court-martial. The summary court-martial has to follow the procedure provided in these Rules. Arraignment of the accused is provided in Rule 111. Rule 115 deals with general plea of 'guilty' or 'not guilty'. Rule 116 deals with the procedure after plea of 'guilty'. Rule 123 provides for procedure on conviction and Rule 124 deals with the sentence. Rule 187(3)(a) provides that every battalion is 'corps' for the purpose of summary court-martial. [Paras 12, 13, 14 and 15] [450-H; 451-A-B-C; 452-B-C; 453-H; 454-A]

3. Section 4 of the Army Act makes applicable its provisions to certain forces under the Central Government. By virtue of Section 4 of the Army Act read with S.R.O.318 dated 6.12.1962 (as amended by S.R.O. 325 dated 31.08.1977), the Army Act has been made applicable to the Assam Rifles. The respondent was thus subject to the provisions of the Army Act. [Paras 7, 16] [449-B-C; 454-B]

4. The courts-martial are of four kinds, (a) general courts-martial; (b) district courts-martial; (c) summary general courts-martial; and (d) summary courts-martial as per Section 108. Rule 39 of the Army Rules deals with ineligibility and disqualification of officers for court-martial. In terms of this Rule, an officer is disqualified for serving on general court-martial or district court-martial if he is an officer who convened the court. A commanding officer of the accused or of the corps to which the accused belongs is also disqualified for serving on general court-martial or district court-martial. However, no disqualification is attached to the officer who convened the court or the commanding officer of the accused or of

A the corps to which the accused belongs for serving on the other two kinds of courts-martial, namely, summary general courts-martial or summary courts-martial. There is neither any impediment nor embargo in the Army Act or the Army Rules for an officer who convened the B summary general courts-martial or summary courts-martial or the commanding officer of the accused or of the corps to which the accused belongs to serve on such court. Section 116 of the Army Act rather provides that a summary court-martial may be held by the commanding C officer of any corps, department or detachment of the regular Army and he shall alone constitute the court (summary court-martial). [Para 17] [454-D-H; 455-A]

5.1. If the provision contained in Section 116 of the Army Act is read with Rules 31 and 39 of the Army Rules, D there remains no manner of doubt that Col. 'S', the commanding officer of the respondent, did not suffer from any disability, ineligibility or disqualification to serve on the summary court-martial to try the respondent despite the fact that he signed and issued the charge E sheet against the respondent. [Para 17] [455-A]

5.2. As a matter of fact, the competence or eligibility of Col. 'S' to serve on the summary court-martial for trial of the respondent was not at all put in issue by the respondent in the entire writ petition. It was only in the F course of arguments before the Single Judge that such a submission was made on behalf of the respondent. The Single Judge was clearly in error in allowing the said argument. Firstly, the argument was raised without any foundation in the writ petition. No plea of actual or G likelihood of bias was raised in the writ petition. There was also no plea taken in the writ petition that he was denied fair trial in the course of summary court-martial. Secondly, and more importantly, the Single Judge overlooked and ignored the statutory provisions. The H Division Bench also failed in considering the matter in

right perspective and in light of the provisions in the Army Act and the Army Rules. [Para 18] [455-F-H; 456-A-B]

5.3. Absence without leave is one of the offences under the Army Act. On conviction by the court-martial of the said offence, the offender is liable to suffer imprisonment for a term which may extend to three years. Alternatively, for such offence any of the punishments provided in Section 71 may be awarded by the court-martial. Clause (e) of Section 71 provides dismissal from the service as one of the punishments awardable by the court-martial for such an offence. The respondent was served with the charge sheet which was in conformity with Rule 31 of the Army Rules and Sections 39 and 116 of the Army Act. The respondent admittedly absented himself from unit line for 808 days. He did not obtain any leave. He pleaded guilty before the summary court-martial. The summary court-martial followed the procedure provided under Rule 116 of the Army Rules and awarded punishment of his dismissal from service. Neither constitution of the summary court-martial nor the procedure followed by that court can be said to suffer from any illegality. The facts are eloquent inasmuch as respondent remained absent without leave for more than two years in the service of about five years. The order of dismissal, in the facts and circumstances of the case, by no stretch of imagination, can be said to be disproportionate or oppressive or founded on extraneous consideration. There was no violation of principles of natural justice. No illegality was committed in convening the summary court-martial by the commanding officer nor there was any illegality in the conduct of the summary court- martial. The respondent pleaded guilty to the charge before the summary court-martial and the summary court-martial found him guilty. It was only then that the order of dismissing the respondent from service was passed. Further, no reasons were required to be

A **recorded by the court-martial. [Paras 19, 22] [456-B-F; 458-D-F]**

Vidya Parkash v. Union of India and Ors. **(1988) 2 SCC 459: 1988 (2) SCR 953 – held applicable.**

B *Punjab National Bank and Ors. v. Kunj Behari Misra* **(1998) 7 SCC 84: 1998 (1) Suppl. SCR 22;** *Maneka Gandhi v. Union of India & Anr.* **AIR 1978 SC 597: 1978 (2) SCR 621 and** *Roop Singh Negi v. Punjab National Bank & Ors.* **(2009) 2 SCC 570: 2008 (17) SCR 1476 – held inapplicable.**

C **Case Law Reference:**

1988 (2) SCR 953	**held applicable**	**Para 20**
1998 (1) Suppl. SCR 22	**held inapplicable**	**Para 21**
D **1978 (2) SCR 621**	**held inapplicable**	**Para 21**
2008 (17) SCR 1476	**held inapplicable**	**Para 21**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1961 of 2010.

E

From the Judgment & Order dated 28.08.2008 of the High Court of Gauhati at Gauhati in Writ Appeal No. 364 of 2007.

R. Balasubramanium, Asha G. Nair, Vikash Malhotra, F Santosh Kumar (For B. Krishna Prasad) for the Appellants.

Apurb Lal, Daleep Singh (For Susmita Lal) for the Respondent.

The Judgment of the Court was delivered by

G

R.M. LODHA, J. 1. This appeal raises the question of the competence of the commanding officer of the accused, who signed and issued the charge sheet, to convene and conduct the summary court-martial against that very accused.

H

2. The above question arises in this way. The respondent, Dinesh Prasad, joined the 11th Assam Rifles as washerman/ rifleman in 1995. For the period between 26.07.1998 and 11.10.2000 (FN), he absented himself from unit unauthorisedly while in active service. On 03.08.2001, Col. A.S. Sehrawat, Commandant, under his signature served a charge sheet under Section 39(a) of the Army Act, 1950 (for short, 'Army Act') on the respondent for the absence without leave for 808 days. The Commandant constituted summary court-martial to try the respondent for the above charge. The respondent pleaded guilty to the charge before the summary court-martial. The summary court- martial, after taking into consideration the facts and circumstances of the case, passed an order on 04.08.2001 dismissing the respondent from service. The Reviewing Officer has confirmed the punishment of dismissal from the service awarded to the respondent.

3. The respondent challenged the punishment awarded to him by the summary court-martial in a writ petition before the Gauhati High Court. The respondent (petitioner therein) explained in the writ petition the reason for his absence. According to him, he lost his mental balance while in service and was suffering from mental depression. At the time of arguments before the Single Judge, it was submitted on his behalf that the very Commandant of the Battalion, who signed and issued the charge sheet to him, convened and presided over the summary court-martial and on conclusion of which the punishment of dismissal from service was imposed which vitiated the court-martial proceedings as he was denied a fair trial.

4. The learned Single Judge held that while issuing a charge sheet the Commandant tentatively made up his mind that there was some material against the delinquent and accordingly, after having issued charge sheet, Col. A.S. Sehrawat, who was Commandant of the Battalion, ought not to have convened the court-martial and in any event ought not to

A have conducted the proceedings of the court-martial leading to the punishment of dismissal from the service. The Single Judge held that in the facts of the case, the proceedings of the summary court-martial held against the delinquent were vitiated on account of likelihood of bias. By the judgment and order B dated 07.09.2006, the Single Judge allowed the writ petition and set aside the respondent's dismissal from service. It was observed, however, that it would be open for the concerned authority to proceed in the matter afresh in accordance with law, if it so desired.

C 5. Being not satisfied with the judgment and order dated 07.09.2006, the present appellants preferred writ appeal. The Division Bench of the Gauhati High Court found that under Section 116 of the Army Act, the summary court-martial proceedings could be held by the commanding officer of any D corps, department or detachment of the regular Army and it need nof necessarily be the commanding officer of the Battalion in which the accused was serving. The Division Bench thus in its order of 28.08.2008 was of the view that there was no justification to interfere with the view taken and the conclusion E reached by the Single Judge in the impugned judgment. It is from this order that the present appeal by special leave has arisen.

6. It is necessary to refer to the relevant statutory provisions F in the Army Act and the Army Rules, 1954 (for short, 'Army Rules') for consideration of the question raised before us. Section 3(v) defines 'commanding officer' as under:

> "S.3(v)- "commanding officer", when used in any provision of this Act, with reference to any separate portion of the G regular army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service, to discharge with respect to that portion of the regular Army or that department, as the case

H

may be, the functions of a commanding officer in regard to matters of the description referred to in that provision". A

7. Section 4 of the Army Act makes applicable its provisions to certain forces under the Central Government. In exercise of the powers conferred by sub-section (1) of Section 4 of the Army Act, the Central Government has issued SRO 117 dated 28.03.1960 and SRO 318 dated 6.12.1962. SRO 318 has been subsequently amended by SRO 325 dated 31.8.1977. SRO 318 dated 6.12.1962 (as amended by SRO 325 dated 31.8.1977) reads as follows: B C

"S.R.O. 318 dated 6th December, 1962 (as amended by S.R.O. No. 325 dated 31st August, 1977). - In exercise of the powers conferred by sub-section (1) of Section 4 of the Army Act, 1950 and in supersession of the notification of the Government of India in the late Affair Department No. 93-X dated 25th June 1942, as subsequently amended, the Central Government hereby - D

(i) Applies to every unit of the Assam Rifles, (and to recruits and personnel or the said Assam Rifles when undergoing training in any army training establishments) being a force raised and maintained in India under authority of the Central Government, all the provisions of the said Act, except those specified in Part A of the Schedule annexed hereto, subject to the modifications set forth in Part B of the that (sic) Schedule, when attached to or acting with any body of the regular army; and E F

(ii) suspends, while this notification remains in force the operation of sections 6,7,8 and 9 of the Assam Rifles Act, 1941 (5 of 1941)". G

8. Chapter VI of the Army Act deals with the offences. Sections 34 to 70 fall under Chapter VI. Section 39, to the extent it is relevant, reads as under:- H

A "39. Absence without leave.- Any person subject to this Act who commits any of the following offences, that is to say, -

(a) absents himself without leave; or

B (b) to (g) .....

shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned".

C 9. Section 108 describes the kinds of courts-martial. The said provision reads as under:

"108. Kinds of courts-martial. - For the purposes of this Act there shall be four kinds of courts-martial, that is to say, -

D

(a) general courts-martial;

(b) district courts-martial;

(c) summary general courts-martial; and

E

(d) summary courts-martial".

10. Section 116 provides that the summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall F alone constitute the court. As per sub-section (2) of Section 116, the proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

G

11. Section 71 provides for punishments awardable by courts-martial. One of the punishments that is awardable by the courts-martial is dismissal of the delinquent from service.

H 12. The Army Rules have been framed by the Central

Government in exercise of its powers under Section 191 for the purposes of carrying into effect the provisions of the Army Act. The powers of the commanding officers in relation to investigation of charges and trial by court-martial are provided in Chapter V of the Army Rules. Rule 31 provides that the charge sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature.

13. Rule 39 deals with ineligibility and disqualification of officers for court-martial. It reads as under:

"39 Ineligibility and disqualification of officers for court-martial;

(1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he--

(a) is an officer who convened the Court; or

(b) is the prosecutor or a witness for the prosecution; or

(c) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) is the commanding officer of the accused, or of the corps to which the accused belongs; or

(e) has a personal interest in the case.

A (3) The provost-marshal or assistant provost-marshal is disqualified from serving on a general court-martial or district court-martial."

14. Rules 106 to 133 of the Army Rules provide for the proceedings for conduct of summary court-martial. The B summary court-martial has to follow the procedure provided in these Rules. Arraignment of the accused is provided in Rule 111. Rule 115 deals with general plea of 'guilty' or 'not guilty'. Rule 116 deals with the procedure after plea of 'guilty'. Rule 116 provides as follows:

C

"116 Procedure after plea of "Guilty":-

(1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not Guilty", the trial shall first proceed with respect to the latter D charges, and, after the finding of these charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the Court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or E may, instead of trying him, record a finding upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.

F (2) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges), the Court shall read the summary of evidence, and annex it to the proceedings or if there is no such summary, shall take and record sufficient evidence to enable it to determine the G sentence, and the reviewing officer to know all the circumstances connected with the offence. The evidence shall be taken in like manner as is directed by these rules in case of a plea of "Not Guilty".

(3) After such evidence has been taken, or the summary H

of evidence has been read, as the case may be, the accused may address the Court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not Guilty", and proceed with the trial accordingly."

(5) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the Court requires to be proved, and would, if proved, effect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

(7) In any case where the Court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions of variations in accordance with sub-rule (3) of rule 121, it may, if it is satisfied of the justice of such course accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations".

15. Rule 123 provides for procedure on conviction and Rule

A 124 deals with the sentence. Rule 187(3)(a) provides that every battalion is 'corps' for the purpose of summary court-martial.

16. It may be immediately stated that by virtue of Section 4 of the Army Act read with S.R.O.318 dated 6.12.1962 (as B amended by S.R.O. 325 dated 31.08.1977), the Army Act has been made applicable to the Assam Rifles. The respondent was thus subject to the provisions of the Army Act.

17. That the Commandant, Col. A.S. Sehrawat, signed and issued the charge sheet to the respondent and convened and C presided over the summary court-martial is not in dispute. It is also not in dispute that the summary court-martial presided over by Col. A.S. Sehrawat awarded to the respondent the punishment of dismissal from service. Whether the above procedure has vitiated the court-martial proceedings against D the respondent is the question. The courts-martial are of four kinds, (a) general courts-martial; (b) district courts-martial; (c) summary general courts-martial; and (d) summary courts-martial as per Section 108. Rule 39 of the Army Rules deals with ineligibility and disqualification of officers for court-martial. E In terms of this Rule, an officer is disqualified for serving on general court-martial or district court-martial if he is an officer who convened the court. A commanding officer of the accused or of the corps to which the accused belongs is also disqualified for serving on general court-martial or district court- F martial. However, no disqualification is attached to the officer who convened the court or the commanding officer of the accused or of the corps to which the accused belongs for serving on the other two kinds of courts-martial, namely, summary general courts-martial or summary courts-martial. There is neither any impediment nor embargo in the Army Act G or the Army Rules for an officer who convened the summary general courts-martial or summary courts- martial or the commanding officer of the accused or of the corps to which the accused belongs to serve on such court. Section 116 of the Army Act rather provides that a summary court-martial may be H

held by the commanding officer of any corps, department or detachment of the regular Army and he shall alone constitute the court (summary court-martial). If the provision contained in Section 116 of the Army Act is read with Rules 31 and 39 of the Army Rules, there remains no manner of doubt that Col. A.S. Sehrawat, who was commanding officer of the respondent, did not suffer from any disability, ineligibility or disqualification to serve on the summary court-martial to try the respondent despite the fact that he signed and issued the charge sheet against the respondent.

18. As a matter of fact, the competence or eligibility of Col. A.S. Sehrawat to serve on the summary court-martial for trial of the respondent was not at all put in issue by the respondent in the entire writ petition. The petitioner therein set up the following grounds, namely; (1) the charge against the petitioner for absenting himself without leave being an offence under Section 39(a) of the Army Act has to be proved beyond reasonable doubt; (2) the petitioner's absence from Unit Headquarters was not willful and intentional; it was for the reason beyond his control; and (3) the punishment awarded by the summary court-martial was not rational and commensurate with the offence proved; it did not maintain the proportion; the punishment was oppressive and out of tune of the occasion. It was only in the course of arguments before the learned Single Judge that a submission was made on behalf of the petitioner that the very Commandant of the Battalion, who signed and issued the charge sheet to him, convened and presided over the summary court-martial and on conclusion of which the punishment of dismissal from service was imposed which vitiated the court-martial proceedings as he was denied a fair trial. In our view, the learned Single Judge was clearly in error in allowing such argument. Firstly, the argument was raised without any foundation in the writ petition. No plea of actual or likelihood of bias was raised in the writ petition. There was also no plea taken in the writ petition that he was denied fair trial in the course of summary court-martial. Secondly, and more

importantly, the learned Single Judge overlooked and ignored the statutory provisions referred to hereinabove. The Division Bench also failed in considering the matter in right perspective and in light of the provisions in the Army Act and the Army Rules.

19. Absence without leave is one of the offences under the Army Act. On conviction by the court-martial of the said offence, the offender is liable to suffer imprisonment for a term which may extend to three years. Alternatively, for such offence any of the punishments provided in Section 71 may be awarded by the court-martial. Clause (e) of Section 71 provides dismissal from the service as one of the punishments awardable by the court-martial for such an offence. The respondent was served with the charge sheet which was in conformity with Rule 31 of the Army Rules and Sections 39 and 116 of the Army Act. The respondent admittedly absented himself from unit line for 808 days. He did not obtain any leave. He pleaded guilty before the summary court-martial. The summary court-martial followed the procedure provided under Rule 116 of the Army Rules and awarded punishment of his dismissal from service. Neither constitution of the summary court-martial nor the procedure followed by that court can be said to suffer from any illegality. The facts are eloquent inasmuch as respondent remained absent without leave for more than two years in the service of about five years. The order of dismissal, in the facts and circumstances of the case, by no stretch of imagination, can be said to be disproportionate or oppressive or founded on extraneous consideration.

20. The decision of this Court in *Vidya Parkash v. Union of India and Ors*[1]. squarely applies to the present situation. Unfortunately, the judgment in *Vidya Parkash*[1] was not brought to the notice of the Single Judge and the Division Bench. The facts in *Vidya Parkash*[1] were these: the appellant was posted as Jawan in Panagarh. He left Panagarh with his wife and

1. (1988) 2 SCC 459.

children for Kanpur without taking any leave. According to Vidya Parkash, he became unwell and he was under treatment of a doctor. When he reported to Panagarh unit with his fitness certificate, he was served with a charge sheet wherein it was ordered by Major P.S. Mahant that he would be tried by summary court-martial. The summary court-martial which was presided over by Major P.S. Mahant ordered his dismissal from service. Vidya Parkash challenged that order in a writ petition before Delhi High Court. Inter alia, a plea was set up that the commanding officer Major P.S. Mahant was not legally competent to preside over a summary court-martial. The Division Bench of the Delhi High Court dismissed the writ petition. It was held that no objection was taken as to the competence of Major P.S. Mahant to act as a Judge in summary court-martial. It was from the order of the Delhi High Court that the matter reached this Court. This Court considered Sections 108 and 116 of the Army Act, Rule 39(2) of the Army Rules and held that the summary court martial held by the commanding officer Major P.S. Mahant was in accordance with the provisions of Section 116 of the Army Act. This Court further observed :

> "13 - The Commanding Officer of the Corps, Department or Detachment of the Regular Army to which the appellant belongs, is quite competent in accordance with the provisions of Section 116 of the said Act and as such the constitution of the summary court martial by the Commanding Officer of the Corps cannot be questioned as illegal or incompetent. It is neither a general court martial nor a district court martial where the appellant's case was tried and decided. In case of general court martial or district court martial Rule 39(2) of the Army Rules, 1954 is applicable and the Commanding Officer is not competent to convene general or district court martial. The summary court martial was held by the Commanding Officer of the corps, Major P.S. Mahant and there are two other officers including Capt. K.J. Singh and another officer

A to attend the proceedings. In such circumstances, the summary court martial having been convened by the Commanding Officer of the corps according to the provisions of the Army Act, 1950, the first submission made on behalf of the appellant fails."

B

21. The legal position exposited by this Court in *Vidya Parkash*[1] renders the impugned judgments unsustainable.

22. Learned counsel for the respondent placed heavy reliance upon the decisions of this Court in *Punjab National* C *Bank and Ors. v. Kunj Behari Misra*[2], *Maneka Gandhi v. Union of India & Anr.*[3] and *Roop Singh Negi v. Punjab National Bank & Ors.*[4], in support of his submission that the order of dismissal from service by the summary court-martial was in violation of principles of natural justice. We are afraid none of these D decisions has any application to the facts of the present case. There is no violation of principles of natural justice. No illegality has been committed in convening the summary court-martial by the commanding officer nor there is any illegality in the conduct of the summary court- martial. The respondent pleaded E guilty to the charge before the summary court-martial and the summary court-martial found him guilty. It was only then that the order of dismissing the respondent from service was passed. It is now settled that no reasons are required to be recorded by the court-martial.

F

23. Civil appeal is allowed. The judgment and order of the Single Judge dated 7.09.2006 and the order of the Division Bench dated 28.08.2008 are set aside. No order as to costs.

B.B.B. Appeal Allowed.

---

2. (1998) 7 SCC 84.
3. AIR 1978 SC 597.
4. (2009) 2 SCC 570.