



2026:DHC:9212-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 17th August, 2026**Pronounced on: 15th October, 2026*# **CNR No. DLHC010222522003**+ **W.P.(C) 2433/2003****EX HAV DHARAMBIR KANKER**

NO. 7773723L

RESIDENT OF VILLAGE & PO GHIRAI

DISTT HISAR (HARYANA)

.....PETITIONER

Through: Mr. S.S. Pandey, Ms. Priyanka
Sachdeva and Mr. Roshan Kumar,
Advocates with petitioner in person.

versus

1. UNION OF INDIA, THROUGH IT'S SECRETARY

MINISTRY OF DEFENCE

SOUTH BLOCK, DHQ, NEW DELHI 110011

.....RESPONDENT NO. 1

2. OFFICER IN CHARGE

RECORD OFFICE

CORPS OF MILITARY POLICE

BANGALORE (KARNATAKA)

.....RESPONDENT NO. 2

3. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS

DAROUPADI GHAT

ALLAHABAD (UP)



.....RESPONDENT NO. 3

4. COL S N AKHADE
COMMANDING OFFICER
4 CORPS OP SIGNAL REGIMENT
C/O 99 APO

.....RESPONDENT NO. 4

Through: Mr. Amit Tiwari, CGSC with Ms. Ayushi Srivastava, Mr. Arpan Narwal, Mr. Kushagra Malik and Mr. Ujjwal Tyagi, Advocates with Major Anish Muralidhar and Capt Himanshu Tyagi, Army.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Articles 226/227 of the Constitution of India, 1950, has been filed seeking the following prayers: -

“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

- i. Issue a writ in the nature of certiorari by quashing the Court Martial Verdict dated 22 June 2000.
- ii. Issue a writ in the nature of mandamus directing the respondent to reinstate the petitioner with all consequential benefits.



iii. To hold Col S N Akhade the commanding officer of 4 Corps Signal Regiment responsible for the malafied Act while conducting the disciplinary proceeding against the petitioner in a most biased and malafied manner.

iv. The petitioner be suitably compensated for the mental and physical agony he had to face under the circumstances by awarding him Rupees Five Lacks and respondent no 4 should pay 50% of the said compensation amount for having acted in a most biased and malafied manner.

v. Exempt the petitioner from filing of certified copies of the Annexures.

vi. Pass any other appropriate writ order or direction as this Hon'ble Court may deem just and proper in the circumstances of the case.

For this act of kindness your humble petitioner will always remain grateful.”

2. The instant petition has been filed by the petitioner against the punishment awarded to him by Summary Court Martial (SCM) held from 13.06.2000 to 22.06.2000 whereby, the petitioner was sentenced “to be reduced to ranks and dismissed from service”, which was subsequently *vide* order/letter dated 02.08.2001 remitted by Chief of Army Staff on humanitarian grounds, and it was directed that the petitioner shall be deemed to have been discharged with effect from the date his dismissal took effect.

Brief Background

3. Brief facts along with list of dates and events in chronological manner as stated in the present petition are as under: -



i) The petitioner was enrolled as a Combat soldier in Army on 13.03.1984. During the course of his services, the petitioner was promoted to the rank of *Hawaldar*, and posted in 4 Corps Provost Unit at Tezpur. From 14.01.1999 till 22.02.2000, the petitioner was posted at Traffic Check Post (TCP). On 22.02.2000, in accordance with Section 26 of the Army Act, 1950, the petitioner-complainant by way of a letter addressed to Provost Marshal Army alleged aggrievance against his unit persons/personnels including Maj DK Roy (Commanding Officer), and 2IC, 4 Corps Pro Unit.

ii) In order to investigate into the allegations made in the said complaint, a Court of Inquiry (for short, 'COI') was ordered by Headquarter 4 Corps (General Commanding Officer-GOC) on 26.03.2000 in accordance with Rule 177 of Army Rules, 1954, to collect evidence in respect of the said allegations. The COI was concluded on 15.04.2000 in which 21 witnesses were examined, and cross-examined by petitioner; however, he had refused to sign on the COI proceedings. The inquiry found that the petitioner could not produce any witness or documentary evidence to substantiate his allegations as contained in letter addressed by him to Provost Marshal and said allegations were found to be false and baseless.

iii) GOC 4 Corps agreed with the findings of the COI and directed that disciplinary action be taken against the petitioner for making a false accusation against a person subject to the Army Act knowing such accusation to be false, and accordingly, on 05.05.2000, inquiry report



was placed before the convening authority for taking disciplinary action against the petitioner. On 06.05.2000, since the allegations levelled by the petitioner were against his 2IC and CO (who was otherwise supposed and had authority to hold disciplinary action), the petitioner was attached to 4 Corps Op Signal Regiment for programming disciplinary proceedings. In the meanwhile, the petitioner sought an interview with GOC 4 Corps which was turned down by Headquarter of the unit, and a request for posting out of the unit to save his life was also made by the petitioner by way of an application dated 22.02.2000.

iv) Hearing of charge against the petitioner was conducted on 17.05.2000, and a summary of evidence was ordered by CO of 4 Corps Op Sig Regt against the petitioner on 09.06.2000 whereby, final chargesheet was filed. The summary of evidence was sought to be served on the petitioner for facilitating preparation of his defence; however, he refused to acknowledge the same.

v) Summary Court Martial proceedings were initiated against the petitioner on 13.06.2000 which were concluded on 22.06.2000. Charges were stated to the petitioner, to which he pleaded 'not guilty', and 18 prosecution witnesses were examined in such proceedings. Opportunity to lead evidence in his defence was given to the petitioner; however, same was declined by him. Statement of the petitioner under Rule 58 of the Army Rules, 1954 (akin to Section 313 of the CrPC) was recorded. On 22.06.2000, sentence was pronounced by the Court.



vi) On 21.09.2000, the petitioner in accordance with Section 164(2) of the Army Act, 1950, preferred a petition before the Chief of Army Staff against the sentence pronounced. The Chief of Army Staff *vide* order dated 02.08.2001 found the contentions of the petitioner to be misconceived and bereft of merits; however, the sentence of the petitioner was remitted, and it was directed that the petitioner shall be deemed to have been discharged with effect from the date when his dismissal took effect.

Previous litigation in the Present Petition

4. The present petition was filed on 21.03.2003. Thereafter, it was clubbed with other matters and was decided *vide* common judgment dated 25th January 2008. *Vide* the said judgment, learned Predecessor Bench of this Court in the present petition along with other connected petitions had formulated the following questions of law pertaining to Summary Court Martial, which read as under: -

“1. This batch of Writ Petitions raises two common questions of law pertaining to the Summary Court Martials (SCMs hereafter) of general importance—(a) **whether an SCM can be convened, constituted and completed by the Commanding Officer (CO for short) of a Unit to which the accused did not belong** and (b) **circumstances in which an SCM can be convened rather than a General Courts Martial (GCM) or District Courts Martial (DCM) or Summary General Courts Martial (SGCM) as envisaged in Section 108 of the Army Act 1950 (Army Act for short).**”

5. While dealing with the aforesaid questions of law, the Court had allowed all the petitions and had set aside the verdict of impugned SCMs on



the short ground that, it was not convened, constituted, and completed by the CO of the Unit to which the petitioner(s) belonged. The relevant observations made in **Ex. LN Vishav Priya Singh & Ors. v. Union of India¹**, read thus: -

“22. An SCM can legitimately be convened where there is grave and compelling cause for taking immediate action which would be defeated if reference to a District Court Martial or Summary General Court Martial is made. In other words, holding of an SCM is the exception and not the rule. From the multitude of possible offences it is only those envisaged in Sections 34, 37 and 69, that can be tried by an SCM, further fortifying the exceptional and extraordinary character of an SCM. We think it necessary to underscore that it is not proper to convene an SCM merely because the offence(s) with which a sepoy of the force is charged finds mention in the enumeration contained in these three Sections. What is of pre-eminence in convening an SCM is that it should be found imperative that immediate action is manifestly necessary. Therefore, it is essential that this factor, viz. need to hold a trial immediately, is articulated and reasoned out in writing in the order convening the SCM. Failure to do so would create good reason to quash the SCM itself. Routinely, and certainly far too frequently, the sentence passed by SCMs violates the spirit of Regulation 448(c) (supra) thereby taking away the sepoys' livelihood without affording them the normal procedural protections of law.

26. In this analysis of the law in the context of the factual matrix spelt out in the Petitions, we set aside the verdict of the impugned SCMs on the short ground that it was not convened, constituted and completed by the CO of the Unit to which the Petitioner belonged. We are fully mindful of the fact that in *Vishav Priya Singh's* petition the situation is a complex one, inasmuch as the allegations have been levelled against the CO of the Unit to which the Petitioner belongs. If the CO were to himself convene the SCM it would tantamount to his being a Judge in his own cause. It has so often been quipped in the portals of the Court that hard cases should not make bad law. Therefore, solution may lie in constituting any other Court Martial,

¹ 2008 SCC OnLine Del 95 : (2008) 147 DLT 202



on an emergency footing if the circumstances so dictate. None of the Petitioners have been charged with the most reprehensible offence conceivable in the Armed Forces, that is of Desertion. Even if so charged it would have to have been further established, as a pre-condition for the holding of an SCM by the CO of the Unit to which the Petitioner was attached, that the CO of the Unit to which the accused belonged was serving in a high altitude area, or overseas or engaged in counter-insurgency operations or active hostilities or in Andaman and Nicobar Islands. We clarify that since the trial is *non est*, the Respondents shall be free to proceed against the Petitioners *de novo* in accordance with law.”

(emphasis supplied)

6. Regarding the other question of law, *i.e.*, (b) - the circumstances in which the SCM can be convened rather than a General Courts Martial (GCM) or District Court Martials (DCM) or Summary General Courts Martial (SGCM) as envisaged in Section 108 of the Army Act, 1950, it was observed by the learned Predecessor Bench that, same can be legitimately convened where there is grave and compelling cause for taking immediate action which would be defeated if reference to a DCM, or SGCM is made. However, the verdict of impugned SCMs were set aside on the short ground that it was not convened, constituted and completed by the CO of the Unit to which the petitioner belonged.

7. The aforesaid judgment passed by learned Predecessor Bench was challenged by the Respondents before the Hon'ble Supreme Court, and *vide* judgement reported as **Union of India v. Vishav Priya Singh**², the present petition was remanded back to this Court, by observing as under: -

“21. Section 116 of the Act empowers the CO of any Corps, Department and Detachment of the regular Army to hold an SCM

² (2016) 8 SCC 641



and specifically states that he alone shall constitute the Court. Sub-section (2) then prescribes that the proceedings shall, however, be attended throughout by two other persons specified therein. However, such persons are not to be sworn or affirmed. Unlike Sections 113, 115 and 114, where composition of the Court Martial concerned is prescribed to consist of at least three officers, it is the CO alone who constitutes the Court under Section 116 in respect of SCM. Further, under Rules 39 and 40 of the Rules, CO of the accused, or of the Corps to which the accused belongs is specifically disqualified for serving on a GCM or DCM and composition of a GCM ought to compose of officers of different corps or departments. However, no such restriction applies to SCMs and in fact the CO himself must constitute the Court. The Act has thus given drastic power to one single individual, namely, the CO who alone is to constitute the Court. No doubt, this power comes with restrictions insofar as the power to award sentence is concerned in terms of sub-sections (4) and (5) of Section 120. However, even with such restrictions the power is quite drastic. The reason for conferment of such power is obvious that in order to maintain discipline among the soldiers and units, the CO must have certain special powers, for it is the discipline which to a great extent binds the unit and makes it a cohesive force.

22. The High Court of Delhi was therefore completely correct in observing that such power must be exercised rarely and when it is absolutely imperative that immediate action is called for. The satisfaction in that behalf must either be articulated in writing or be available on record, specially when the matter can be considered on merits by a tribunal, with the coming into force of the Armed Forces Tribunal Act, 2007.

33. It is noticeable that the expression “to which the accused belongs” finds mention in Rule 39 of the Rules as dealt with hereinabove in the context of GCM or DCM but not with respect to SCM. Under Rule 133 of the Rules the proceedings of an SCM must immediately on promulgation be forwarded through the Deputy Judge-Advocate General of the command “in which the trial is held”. On the other hand, under Rule 146 of the Rules the proceedings of an SCM must be preserved with the records of the



corps or the department “to which the accused belonged”. It is thus possible and well contemplated that the trial by SCM may be held in a unit other than the one to which the accused belongs. Rules 39 and 146 further disclose that wherever the statute wanted to specify the unit or department “to which the accused belonged” it has done that with great clarity. No such qualification is specified in respect of the CO who is to convene, constitute and complete the SCM.

35. In the premises, we hold that it is not imperative that an SCM be convened, constituted and completed by CO of the unit to which the accused belonged. **It is competent and permissible for the CO of the unit to which the accused was attached or sent on attachment for the purposes of trial, to try such accused by convening, constituting and completing SCM in a manner known to law i.e. strictly within the confines of Sections 116 and 120 of the Act and other statutory provisions. We fully endorse and affirm the view taken by the High Court that SCM is an exception and it is imperative that a case must be made out for immediacy of action. The reasons to convene an SCM must be followed by well-articulated reasons or the record itself must justify such resort.**

37. Since the High Court of Delhi had allowed the writ petitions on the short ground of competence of a CO of a unit other than the one to which the accused belonged, without going into the merits of the matters before it, while setting aside the view in respect of that point and allowing the appeals preferred by the Union of India, namely, Civil Appeals Nos. 8360, 8830-35 and 8838 of 2010, we remit the matters back to the High Court. The writ petitions concerned stand restored on the file of the High Court for consideration on merits..”

(emphasis supplied)

8. The Hon’ble Supreme Court in paragraph 22 upheld the view taken by the learned Predecessor Bench with respect to second question of law, *i.e.*, the



circumstances in which the SCM can be convened rather than GCM or a DCM, or SGCM as envisaged in Section 108 of the Army Act. It was further observed that such power must be exercised rarely, and when the same is absolutely imperative that the immediate action is called for and it was further observed that the satisfaction in that behalf should be recorded in writing or be available on record especially when the matter can be considered on merits by a Tribunal. Subsequently, on a review application filed on behalf of the respondents/UOI seeking review of the aforesaid judgment dated 05.07.2016, the Hon'ble Supreme Court in **Union of India v. Vishav Priya Singh**³, while clarifying the earlier judgment on 16.02.2017, had observed and held as under: -

“4. The thrust of the review petition is against the observations made by this Court, in paragraphs 20 and 33 of the Judgment under review, which are quoted here :-

“20. The High court of Delhi was therefore completely correct in observing that such power must be exercised rarely and when it is absolutely imperative that immediate action is called for. The satisfaction in that behalf must either be articulated in writing or be available on record, specially when the matter can be considered on merits by a tribunal, with the coming into force of the Armed Forces Tribunal Act, 2007.”

(emphasis added)

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“33. We fully endorse and affirm the view taken by the High Court that SCM is an exception and it is imperative that a case must be made out for immediate action. The reasons to convene an SCM must be followed by well articulated reasons or the record itself must justify such resort.”

(emphasis added)

³ (2020) 14 SCC 518



5. It is submitted inter alia in the review petition, that neither the Army Act nor the Army Rules obligate recording of reasons for convening Summary Court Martial.

6. Relying principally on Section 120 of the Army Act, and the other relevant provisions and so also the judgment of High Court of Delhi, which was under appeal, this Court in the Judgment and Order dated 05.07.2016 had made aforesaid observations in paragraphs 20 and 33. We do not find any error apparent on record, calling for any intervention in our review jurisdiction.

7. However, it is observed, that the requirement, as stipulated in aforesaid paragraphs 20 and 33, of recording reasons for convening Summary Court Martial, shall apply on and with effect from the date of the Judgment namely from 05.07.2016. Except for this clarification, we are satisfied, that no case for review of the judgment dated 05.07.2016 has been made out.

8. The review petition is, accordingly, dismissed on the ground of delay as well as on merits.”

(emphasis supplied)

9. In view of the above, learned counsel for the petitioner has contended that since the observation of the learned Predecessor Bench, that power to convene SCM must be exercised rarely and when it is absolutely imperative that immediate action is called for, has been upheld by the Hon'ble Supreme Court, the same will still constitute a ground to challenge a SCM convened in cases where there was no grave and compelling cause for taking immediate action, as in the present case.

Submissions on Behalf of the Petitioner

10. In addition to the aforesaid, learned counsel for the petitioner has made the following submissions in support of latter's case: -



a. It is submitted that in the year 1998, the petitioner was posted at Tejpur, Assam and in the same year, the genesis of the present dispute had arisen when the petitioner refused to participate in illegal activity of transporting woods from the reserve forest using the Unit Personnel. It is submitted that on 14th October, 1999, when the petitioner was posted at TCP, Missamari, he received a telephonic call whereby direction was given to him to accompany other *Jawans* to Balukpong jungles for purpose of illegally stealing the timber woods. The petitioner declined to participate in such illegal activities, and upon such refusal, he was summoned by Mr. N.K. Tiwari on the instructions of Maj. DK Roy. It is the case of the petitioner that thereafter, Maj. DK Roy, specifically and deliberately started targeting the petitioner in retaliation to not participating in the illegal activity of stealing the woods from reserve forests which was carried on by him in connivance with Commanding Officer as well as other Personnel posted in the Unit.

b. The petitioner being left with no other option, on 22nd February, 2000, on account of continuous harassment meted out to him, submitted an application through proper channel to Provost Marshal, 4-Corps, CMP, requesting that he may be posted out of the Unit. It is submitted that since the petitioner was posted out of the Unit in which COI was undertaken, he was only permitted selective participation and wrong endorsement was made with respect to his presence in COI, convened on the basis of complaint made by him. Such an irregularity with respect to the presence of the petitioner in COI on account of



posting of the petitioner out of the Unit was brought to the notice of Superior Authorities by the Petitioner in accordance with Regulation 317 of the Defence Service Regulation, 1987. It is the case of the petitioner that the Court of Inquiry was predetermined and had prejudice as well as bias against the petitioner for making allegations in his application dated 22nd February, 2000, which later on become the basis for initiating disciplinary action against him by way of SCM proceedings.

c. The direction with respect to disciplinary action being taken against the petitioner and hearing on charge in pursuance thereof and summary of evidence prepared was only on paper without ensuring that the petitioner had participated in the same. It is the case of the petitioner that there was no urgency for him being tried by SCM as his Unit was deployed in the peace area and this tactic was used as SCM can be conducted by single person, *i.e.*, the Commanding Officer, and he acts as a prosecutor and judge in the same and accused in SCM proceedings is not allowed to make any legal representation to make submissions on his behalf. It is further pointed out that Court in SCM is not even obliged to record its reasons in support of the findings which otherwise is mandatory in case of GCM/DCM. This as per the petitioner had completely undermined the fairness of the proceedings undertaken against him. Despite irregularities, sufficient evidence had come on record during SCM that the averment in the complaints submitted by the petitioner against his superior officers had resulted in his victimization in his Unit.



d. It is submitted that in the SCM proceedings, the petitioner was found guilty of eight charges levelled against him and sentenced, “to be reduced to ranks and to be dismissed from service”. However, on representation made before the Chief of Army Staff under Section 164(2) of the Army Act, such punishment was converted from punishment of dismissal to discharge, and the same has resulted in grant of pension to the petitioner in his reduced rank of Sepoy *w.e.f.* 22nd June, 2000. It is the case of the petitioner that this has caused grave misjustice to him as the pay of *Hawaldar* is almost twice to that of Sepoy, and if he would have been at the rank of *Hawaldar* than his services would have continued till 2010, by which benefit of 6th CPC might have enured to his benefit as also extension of benefit of MACP *w.e.f.* 1st January, 2006. It is the further the case of the petitioner that he had unblemished service record and would have retired as JCO by way of promotion; which he could have gained during services.

e. It is further submitted that there are various discrepancies in the SCM proceedings conducted against the petitioner inasmuch as beginning from the hearing on charge as also during the course of examination of witnesses, the petitioner was not present before the SCM and he was also not afforded any opportunity to effectively cross-examine the prosecution witnesses. The petitioner was also not provided any effective legal representation and the name of the persons referred to as friends of the accused who were provided to him during the course of SCM proceedings is merely an eyewash as the said memo



has not been countersigned by the petitioner and there is no endorsement in contrast to the same.

f. In view of the aforesaid submissions, it is submitted that the present petition may be allowed and the findings and sentence awarded by SCM may be quashed. Further direction to re-instate the petitioner in service for the purpose of grant of consequential benefits with pay including back wages, continuity of service, seniority as also promotion, had the petitioner not subjected to SCM along with post-retirement benefits is also sought.

Submissions on Behalf of the Respondents

11. Learned Central Government Standing Counsel (CGSC) appearing on behalf of the respondents, while refuting the contentions raised on behalf of the petitioner, has made the following submissions: -

a) The petitioner herein had preferred a complaint dated 22.02.2000 before the provost Martial HQ 4 corps alleging grievances against his 2IC, Commanding Officer (CO)-Major DK Roy. It is the case of the respondents that such a complaint ought to have been preferred before Col. AK Sharma, who was the head of the unit, in accordance with Section 26 of the Army Act, 1950; however, the petitioner had addressed the subject complaint to the Corps Commander. Despite the same, on receipt of such complaint, GOC-General Commanding Officer in all fairness ordered for a Court of Inquiry to be convened in



accordance with Rule 177 of the Army Rules, 1954. The purpose of such COI, as per learned CGSC, was to collect evidence in respect of the allegations levelled by the petitioner in the complaint dated 22.02.2000 against the superior officers of his unit. It is pointed out that during the course of such inquiry, 21 witnesses were examined including 9 independent witnesses. The petitioner being the complainant had refused to sign his statement despite being furnished a *Hindi* translation of his statement made before the said Court of Inquiry.

b) In compliance with the principles of natural justice, the petitioner was provided an opportunity to cross-examine the witnesses examined during the Court of Inquiry in accordance with Rule 180 of the Army Rules, 1954; however, he had declined to avail such opportunity. It is further pointed out that the Court of Inquiry had recorded the personality traits and conduct of the petitioner during the inquiry, and upon completion, in the findings returned by the COI, none of the allegations levelled by the petitioner against the superior officers of his Unit were found to be proved and it was opined by the COI that such allegations were false and baseless. Such findings/inquiry report was placed before convening authority, which directed that disciplinary action ought to have been taken against the petitioner for levelling false allegations against the superior officers of his unit.

c) It is submitted that in order to ensure fairness and remove any iota of biasness on the part of disciplinary authority, the petitioner was



in terms of Army Order 7/2000, attached to 4 Corps Signal Regiment, which was a different unit, for the purposes of the disciplinary action proposed against him. Said Army Order 7/2000 was with respect to attachment of service personnel to Units, for progressing, disciplinary/vigilance case under the Army Act. Learned CGSC has further submitted that the petitioner was placed in a different unit, besides the one in which disciplinary action was proceeded against him, in order to ensure observation of principles of natural justice inasmuch as such disciplinary action was primarily initiated on the basis of complaint dated 22.02.2000 wherein, allegations were levelled by the petitioner against his commanding officer as well as 2IC, who would otherwise have held the disciplinary proceedings.

d) It is further pointed out that hearing of the charge during disciplinary proceedings was done in accordance with Rule 22 of the Army Rules, 1954, and 9 charges were framed against him. As per Respondents, summary court martial was conducted in compliance with Army Rules. The petitioner was also provided within opportunity to be represented by a friend. However, he had refused/declined to give any name for friend of accused and refused to accept anyone from the friend of accused made available to him and the same can be inferred from the record of SCM proceedings dated 13.06.2000. It is the case of the respondents that three independent officers were provided to the petitioner to conduct disciplinary proceedings on his behalf. The petitioner had himself declined to cross-examine the witnesses except Maj. DK Roy, who was examined as Prosecution Witness No.9. The



petitioner was also offered an opportunity to lead evidence and his statement as the accused was also recorded, and he had answered all the questions put to him.

e) Reliance has been placed by learned CGSC on a judgement passed by Hon'ble Supreme Court in **Union of India v. Major A. Hussain**⁴, to contend that this Court in exercise of its power of traditional review does not sit as a court of appeal over the proceedings of a Court Martial, and only procedure followed is to be seen. Further reliance has been placed on judgement passed by a learned Coordinate Bench of this Court in **Sachin Kumar Solanki (Retd.) v. Union of India**⁵, in support of this contention.

f) It is further submitted that opportunity to lead evidence as well as cross examine the witnesses was offered to the petitioner at every stage and same was declined by the petitioner.

g) Regarding the query posed by this Court during the course of hearing with respect to the recording of reasons expedient for constituting SCM-Summary Court Martial against the petitioner and for not proceeding under any other clauses mentioned in Rule 22 of the Army Rules, learned CGSC has relied on an order passed by the Hon'ble Supreme Court in **Union of India & Ors. v. Vishav Priya**

⁴ (1998) 1 SCC 537

⁵ 2026: DHC: 4483-DB



Singh⁶, and has contended that, it has been clarified that the ruling of law that power to convene SCM should be exercised only in exceptional circumstances and should be supported by reasoned order as laid down in **Vishav Priya Singh**⁷, would be applicable from the date of passing of said judgement, *i.e.*, 05.07.2016. It is submitted that the proceedings in the present case pertains to the SCM convened in the year 2000. Thus, there was no occasion for the disciplinary authority for explicitly recording the reasons for proceedings under SCM against the petitioner and not any other clauses of Rule 22 of the Army Rules, or for that matter, for convening a GCM/DCM/SGCM as envisaged under Section 108 of the Army Act, 1950.

h) Thus, in these circumstances, it is prayed that the present petition, being devoid of merit, may kind be dismissed.

Analysis and Findings

12. Heard learned counsel for the petitioner as well as learned CGSC for the respondents and perused the records.

13. Before this Court proceeds further, it will be apposite to refer to certain provisions of the Army Act, 1950, which would have a bearing on the present *lis*.

⁶ (2020) 14 SCC 518

⁷ (2016) 8 SCC 641



14. The petitioner has been accused for violation of Section 56 of the Army Act, 1950, which reads as under: -

“**56. False accusations.** Any person subject to this Act who commits any of the following offences, that is to say,-

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts;

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

15. The case of the respondents was that the petitioner had made a complaint whereby he had made false allegations against his 2IC directly including the Commanding Officer as well as other senior officers of the Unit. The procedure prescribed with respect to the aforesaid offence is that once such complaint is received, the competent authority, after having established the identity of the complainant, should detail a responsible officer to carry out preliminary investigations to ascertain if there is substance in the complaint, and where *prima facie* or after preliminary investigations, the allegations are found to have substance, a proper Court of Inquiry should be convened to investigate them, and disciplinary or administrative action be initiated against the delinquent individuals. Such disciplinary action can be as per Section 108 of the Army Act, 1950, which provides for court martials and reads as under:

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

- (a) General Courts Martial;
- (b) District Courts Martial;
- (c) Summary General Courts Martial; and
- (d) Summary Courts Martial.”

16. Section 116 provides for Summary Court Martial, which reads as under: -

“116. Summary Court Martial.—(1) A 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.

(2) 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.”

17. Section 120 further provides for powers of summary courts martial which reads as under: -

“120. Powers of Summary Courts Martial.—(1) Subject to the provisions of sub-section (2), a Summary Court Martial may try any offence punishable under this Act.

(2) When there is no 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 the trial of the alleged offender, an officer holding a Summary Court Martial shall not try without such reference any offence punishable under any of the Sections 34, 37 and 69, or any offence against the officer holding the court.



(3) A Summary Court Martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A Summary Court Martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the Summary Court Martial is of the rank of Lieutenant Colonel and upwards, and three months if such officer is below that rank.”

(emphasis supplied)

18. As per the case of the respondents, after receipt of the complaint, the Court of Inquiry is convened in terms of Rule 177 of the Army Rules, 1954, contained in Chapter VI- ‘Courts of Inquiry’, which reads as under: -

“177. Courts of Inquiry. (1) A court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(2) The court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or noncommissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.”

19. Thereafter, hearing of charge is conducted under Section I (investigation of charges and remand for trial) of Chapter V which provides



for Investigation of Charges and Trial by Court Martial of the Army Rules, 1954. The relevant Rules of the said Chapter read as under: -

“22. Hearing of charge. (1) Every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

(2) The commanding officer shall dismiss a charge brought before him, if, in his opinion, the evidence does not show that an offence under the Act has been committed, and may do so if he is satisfied that the charge ought not to be proceeded with:

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of section 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time-

- (a) dispose of the case under section 80 in accordance with the manner and form in Appendix III ; or**
- (b) refer the case to the proper superior military authority; or**
- (c) adjourn the case for the purpose of having the evidence reduced to writing; or**
- (d) if the accused is below the rank of warrant officer, order his trial by summary court-martial:**

Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a



summary general court-martial for the trial of the alleged offender unless –

- (a) the offence is one which he can try by a summary court-martial without any reference to that officer; or
- (b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the original charge.

23. Procedure for taking down the summary of evidence. (1)

Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such question as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name shall be attested by the mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked; “Do you wish to make any statement? You are obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence”. Any statement thereupon made by the accused shall be taken down and read over to him, but he will not be cross-examined upon it. The accused may then call his witnesses, including if he so desires, any witnesses as to character.



(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing, be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

24. Remand of accused. (1) The evidence and statement (if any) taken down in writing in pursuance of rule 23 (hereinafter referred to as the “summary of evidence”), shall be considered by the commanding officer, who thereupon shall either –

- (a) remand the accused for trial by a court-martial; or
- (b) refer to case to the proper superior military authority; or
- (c) if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily.

(2) If the accused is remanded for trial by a court-martial, the commanding officer shall without unnecessary delay either assemble a summary court martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary or apply to the proper military authority to convene a court-martial, as the case may require.”

(emphasis supplied)

20. It is the case of the respondents that since the Court of Inquiry was convened in accordance with Rule 177, and the provisions of Rule 180 were



complied with during the proceedings before COI, the procedure provided under sub-rule (1) of Rule 22 was dispensed with. Rule 180 of the Army Rules provides for procedure when character of a person subject to the Act is involved. The said Rule reads as under: -

“180. Procedure when character of a person subject to the Act is involved. Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, **full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character and military reputation.** The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.”

(emphasis supplied)

21. As per sub-rule (3) of Rule 22 of the Army Rules, once the commanding officer is of the opinion that the charge ought to be proceeded with, then he can exercise the options as provided in said Rule. One of the options provided in Rule 22 (3) (a) is to dispose of the case under Section 80 in accordance with the manner and form in Appendix III; or as per Rule 22 (3) (b), refer the case for the proper superior military authority; or as per Rule 22 (3) (d), if the accused is below the rank of warrant officer, order his trial by a summary court martial. Section 80 of the Army Act provides as under: -

“80. Punishment of persons other than officers, junior commissioned officers and warrant officers. Subject to the provisions of section 81, a commanding officer or such other officer



as is, with the consent of the Central Government, specified by ⁸[the Chief of the Army Staff], may, in the prescribed manner, proceed against a person subject to this Act other, wise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,

-

- (a) imprisonment in military custody up to twenty- eight days;
- (b) detention up to twenty- eight days;
- (c) confinement to the lines up to twenty- eight days;
- (d) extra guards or duties;
- (e) deprivation of a, position of the nature of an appointment or of corps or working pay, and in the case of noncommissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay
- (g) severe reprimand or reprimand
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of section 91;
- (j) ⁹ [***]"

22. The petitioner being *Hawaldar*, was a non-commissioned officer, and therefore, Section 80 of the Army Act would be applicable to him. Similarly, as per the second proviso to Rule 22 (3), the commanding officer shall not order trial by summary court martial without reference to the officer empowered to convene a district court martial or an active service a summary general court martial for the trial of the alleged offender unless the offence is one which he can try by a summary court martial without any reference to that officer; or he considers that there is a grave reason for immediate action and such reference cannot be made without detriment to discipline. In the present case, none of the said satisfactions have been recorded by the concerned commanding officer. The reading of the aforesaid provisions would

⁸ Subs. by Act 19 of 1955. S. 2 and Sch., for" the Commander- in- Chief"

⁹ Omitted by Act 37 of 1992, s. 3.



demonstrate that before convening a summary court martial, the concerned officer had various options which could be resorted to. However, none of such options, in the present case, have been examined. As per the record, there is no indication whether the Commanding Officer has applied his mind to the aforesaid provisions before exercising the exceptional power to convene the SCM.

23. In the present case, the complaint by the petitioner was made on 22nd February, 2000, before the Provost Marshal Army, and on receipt of the said complaint, Headquarter 4 Corps (General Commanding Officer-GOC) on 26th March, 2000, ordered for convening a Court of Inquiry in accordance with Rule 177 of the Army Rules, 1954. The said COI assembled on 29th March, 2000 and was concluded on 15th April, 2000. During the course of inquiry, 21 witnesses were examined including 9 independent witnesses.

24. On 5th May, 2000, the inquiry report was placed before the convening authority, which directed disciplinary action against the petitioner. Hearing of charge as per Rule 22 of the Army Rules was conducted, and the final chargesheet was drawn on 9th June, 2000, and the summary court martial proceedings was conducted from 13th June, 2000 to 22nd June, 2000.

25. In these circumstances and in view of the provisions, as enumerated hereinabove, it was incumbent upon the competent authority to record the satisfaction for exercising the drastic power to order a SCM, and that, it was absolutely imperative that immediate action was necessary in such circumstances. The aforesaid issue had come up before the Hon'ble Supreme



Court in **Randhir Singh v. Union of India & Ors.**¹⁰, wherein after analysing the judgment in **Union of India & Ors. v. Vishav Priya Singh (supra)**¹¹, it was observed and held as under: -

“5. On the question of law, it was urged that having due regard to the provisions of Section 120 of the Army Act, 1950 and the decision of this Court in *Ratan Singh v. Union of India* [*Ratan Singh v. Union of India*, 1992 Supp (1) SCC 716 : 1992 SCC (Cri) 358 : AIR 1992 SC 415] and in *Union of India v. Vishav Priya Singh* [*Union of India v. Vishav Priya Singh*, (2016) 8 SCC 641 : (2016) 2 SCC (L&S) 489], the convening of an SCM is by way of an exception where immediate action is necessary. Hence, it was urged on behalf of the appellant that there was no reason or justification to hold an SCM in May 2008 in respect of an incident that took place in August 2007.

6. In response, Mr Sanjay Jain, the learned Additional Solicitor General submitted that on the merits of the charge of misconduct, both the victim and her spouse deposed in the course of the inquiry by the SCM. Hence, it was submitted that there is no occasion for this Court to review the pure findings of fact which have been affirmed by the Armed Forces Tribunal. Moreover, it was urged that the judgment in *Vishav Priya Singh* [*Union of India v. Vishav Priya Singh*, (2016) 8 SCC 641: (2016) 2 SCC (L&S) 489] has since been clarified in the course of a review 16-2-2017 [*Union of India v. Vishav Priya Singh*, (2020) 14 SCC 518] so as to be applicable on and from 5-7-2016, whereas the incident in question dates back to August 2007.

7. In the exercise of its appellate jurisdiction, this Court would be circumspect in reassessing the evidence when the Armed Forces Tribunal has duly applied its mind to the findings of fact. We have also duly assessed the submission of the appellant that in the present case, the appellant had lodged a complaint in the past against the spouse of the victim for pilferage of petrol. Be that as it may, it is not necessary for this Court to enter upon the findings of fact since there is an independent ground on which the submissions of the appellant would be worthy of acceptance.

¹⁰ (2020) 14 SCC 513

¹¹ (2016) 8 SCC 641: 2016 SCC OnLine SC 658



8. Section 120 of the Army Act, 1950 provides as follows: -

“120. Powers of Summary Courts Martial.—(1)

Subject to the provisions of sub-section (2), a Summary Courts Martial may try any offence punishable under this Act.

(2) When there is no 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 the trial of the alleged offender, an officer holding a Summary Courts Martial shall not try without such reference any offence punishable under any of the Sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A Summary Courts Martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A Summary Courts Martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the Summary Courts Martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.”

9. These provisions were interpreted in the decision in Ratan Singh [Ratan Singh v. Union of India, 1992 Supp (1) SCC 716 : 1992 SCC (Cri) 358: AIR 1992 SC 415]. Subsequently in Vishav Priya Singh [Union of India v. Vishav Priya Singh, (2016) 8 SCC 641: (2016) 2 SCC (L&S) 489], a three-Judge Bench of this Court, while interpreting Section 120, has observed thus: (Vishav Priya Singh case [Union of India v. Vishav Priya Singh, (2016) 8 SCC 641 : (2016) 2 SCC (L&S) 489] , SCC pp. 661-62, paras 21-22) “21.



Section 116 of the Act empowers the CO of any Corps, Department and Detachment of the regular Army to hold an SCM and specifically states that he alone shall constitute the Court. Sub-section (2) then prescribes that the proceedings shall, however, be attended throughout by two other persons specified therein. However, such persons are not to be sworn or affirmed. Unlike Sections 113, 115 and 114, where composition of the Court Martial concerned is prescribed to consist of at least three officers, it is the CO alone who constitutes the Court under Section 116 in respect of SCM. Further, under Rules 39 and 40 of the Rules, CO of the accused, or of the Corps to which the accused belongs is specifically disqualified for serving on a GCM or DCM and composition of a GCM ought to compose of officers of different corps or departments. However, no such restriction applies to SCMs and in fact the CO himself must constitute the Court. The Act has thus given drastic power to one single individual, namely, the CO who alone is to constitute the Court. No doubt, this power comes with restrictions insofar as the power to award sentence is concerned in terms of sub-sections (4) and (5) of Section 120. However, even with such restrictions the power is quite drastic. The reason for conferment of such power is obvious that in order to maintain discipline among the soldiers and units, the CO must have certain special powers, for it is the discipline which to a great extent binds the unit and makes it a cohesive force.

22. The High Court of Delhi was therefore completely correct in observing [Vishav Priya Singh v. Union of India, 2008 SCC OnLine Del 95: (2008) 147 DLT 202] that such power must be exercised rarely and when it is absolutely imperative that immediate action is called for. The satisfaction in that behalf must either be articulated in writing or be available on record, specially when the matter can be considered on merits by a tribunal, with the coming into force of the Armed Forces Tribunals Act, 2007.”

10. In a review petition [Review Petition No. 3927 of 2016] filed by the Union of India, the earlier judgment was clarified on 16-2-2017 [Union of India v. Vishav Priya Singh, (2020) 14 SCC 518] in the following terms : (Vishav Priya Singh case [Union of India v. Vishav Priya Singh, (2020) 14 SCC 518] , SCC p. 519, para 6)



“6. ... the requirement, as stipulated in aforesaid paras 22 and 35, of recording reasons for convening Summary Court Martial, shall apply on and with effect from the date of the judgment [Union of India v. Vishav Priya Singh, (2016) 8 SCC 641: (2016) 2 SCC (L&S) 489], namely, from 5-7-2016. Except for this clarification, we are satisfied, that no case for review of the judgment dated 5-7-2016 [Union of India v. Vishav Priya Singh, (2016) 8 SCC 641: (2016) 2 SCC (L&S) 489] has been made out.”

11. The above clarification indicates that the requirement of recording reasons for convening a Summary Court Martial shall apply from 5-7-2016. However, the fundamental principle of law which has been enunciated is that the power to order an SCM is a drastic power which must be exercised in a situation where it is absolutely imperative that immediate action is necessary. Sub-section (2) of Section 120 is prefaced by the words “when there is no grave reason for immediate action”. In the present case, though the incident took place on 11-8-2007, the SCM took place on 22-5-2008. The convening of an SCM was contrary to law.”

Thus, the Hon’ble Supreme Court while affirming the ratio of **Vishav Priya Singh (supra)**¹², to a SCM which was prior to the cut-off date, held that the power to hold SCM is a drastic power which would be exercised in a situation where it is absolutely imperative that an immediate action is required, as the same being fundamental principle of law.

26. Insofar as the order of review dated 16.02.2017¹³ with respect to applicability of judgment rendered in **Vishav Priya Singh (supra)**¹⁴ from the date of its pronouncement, i.e., 05.07.2016, is concerned, the counsel for the

¹² (2016) 8 SCC 641: 2016 SCC OnLine SC 658

¹³ (2020) 14 SCC 518

¹⁴ (2016) 8 SCC 641: 2016 SCC OnLine SC 658



petitioner has rightly contended that the said restriction would not apply to the present case inasmuch as the view of the learned Predecessor Bench *qua* the present case was upheld by the Supreme Court. In these exceptional circumstances, the view rendered by the learned Predecessor Bench *vide* judgment dated 25th January, 2008, that the power to convene SCM must be exercised rarely, and only when it is absolutely imperative that immediate action is called for, and the satisfaction in that behalf must be articulated in writing or be available on record, with respect to aforesaid question of law would continue to hold the ground.

27. In view of the aforesaid observations, this Court is of the considered opinion that the court-martial by way of SCM in the present case could not have been convened. The respondents have failed to demonstrate that there were grave reasons for immediate action, and the holding of court-martial by SCM, despite other alternatives being available, was absolutely necessary, and that the case of the petitioner was not covered by any of the other alternatives under Section 80 of the Army Act, 1950.

28. As noted hereinbefore, the convening of SCM was resorted to by the competent authority without recording the satisfaction under Section 120 of the Army Act. The SCM in the present case was convened on 13.06.2000. The cause of action as per the respondents for taking disciplinary action against the petitioner had arisen on 29.02.2000, when the first complaint was made by the petitioner before Provost Marshal's office. Thus, there were no well-articulated reasons to convene an SCM and taking recourse to the same is also not justifiable or borne out from the record of the present case. The



incident in the present case pertains to the year 1999, and approximately 27 years have passed since then, and therefore, no useful purpose would be served, if a direction is given at this stage for remanding the matter back for fresh consideration. This Court has already held that convening of SCM was contrary to law. In that view of the matter, ends of justice will be met, if the punishment awarded to the petitioner is quashed.

29. In view thereof, the present petition is allowed and disposed of accordingly. The punishment awarded to the petitioner sentencing him, “to be reduced to ranks and dismissed from service” which was subsequently, *vide* order/letter dated 02.08.2001 by Chief of Army Staff, to the extent that, the petitioner shall be deemed to have been discharged with effect from the date of his dismissal took effect, is set aside. The petitioner stands re-instated in service.

30. As per the records, the last rank held by the petitioner was ‘*hawaldar*’; however, owing to the punishment awarded in SCM, the rank for pension of the petitioner for pension was considered to be ‘*Sepoy*’. The date of birth of the petitioner is 06.04.1964, and he was enrolled in services on 13.03.1984. The age of superannuation for a ‘*hawaldar*’ is 49 years of age or after completing 26 years of service, whichever is earlier. In such an eventuality, the petitioner would have continued his services for a period of 26 years, *i.e.*, till 12.03.2010, and thus, he would have been deemed to be in service till said date at the rank of ‘*hawaldar*’. The petitioner shall be entitled to all benefits notionally as if he was in service till the date of his superannuation.



31. Let all the benefits payable to the petitioner be computed and the balance sum of pension together with other retiral benefits be released to him as early as possible, but positively between three months from date of receipt of a copy of this judgment and order. In default, the sum payable to the petitioner shall carry interest @ 6% per annum.

32. Judgment be uploaded on the website of this Court, *forthwith*.

**NITIN WASUDEO SAMBRE
(ACTING CHIEF JUSTICE)**

**AMIT SHARMA
(JUDGE)**

OCTOBER, 15 2026/nk/kr/ns