Supreme Court of India
Chief Of The Army Staff And Others vs Major Dharam Pal Kukrety on 21 March, 1985
Equivalent citations: 1985 AIR 703, 1985 SCR (3) 415
Author: D Madon
Bench: Madon, D.P.

PETITIONER:
CHIEF OF THE ARMY STAFF AND OTHERS

Vs.

RESPONDENT:
MAJOR DHARAM PAL KUKRETY

DATE OF JUDGMENT21/03/1985

BENCH:
MADON, D.P.
BENCH:
MADON, D.P.
CHANDRACHUD, Y.V. ((CJ)
MISRA RANGNATH

CITATION:
1985 AIR 703 1985 SCR (3) 415
1985 SCC (2) 412 1985 SCALE (1)582

ACT:
Constitution of India Article 226-Maintainability of writ petition at the stage of show cause notice to terminate the services of a service personnel by the Chief of the Army staff when the finding of a court martial even on revision is perverse or against the weight of evidence on record-Army Act, 1950 sections 18 to 24, 108, 121, 127, 153, 154, 160(1), 191 and the Army Rules 1954 Rules 14 and 68 to 71, scope of-Competency of the Chief of the Army Staff to have recourse to Rule 14 of the Army Rules, when the general court martial originally and on revision returned a verdict of "Not guilty" -Principle of double jeopardy Aufrefois Acquit applicability-Constitution of India Article 20(2) read with Army Act, section 121.

HEADNOTE:
The respondent, a permanent commissioned officer of the Indian Army holding the substantive rank of captain and the acting rank of major, as a result of certain incidents which are alleged to have taken place on November 5 and 6, 1975 was ordered to be tried by a general court martial. On March 13, 1976, the court martial announced its finding subject to confirmation, the finding being "Not guilty of all the

charges." The General Officer Commanding, Madhya Pradesh, Bihar and Orissa Area, the third appellant, who was the confirming authority, did not confirm the verdict and by his order dated April 3, 1976, sent back the finding for revision. The same general court martial, therefore, reassembled on April 14, 1976, and after hearing both sides and taking into consideration the observations made by the third appellant in his said order dated April 3, 1976, adhered to its original view and once again announced the finding subject to confirmation, that the respondent was "Not guilty of all the charges". The third appellant reserved confirmation of the finding on revision by a superior authority, namely, the General Officer, Commanding-in-Chief, Central Command, Lucknow, the second appellant, and forwarded the papers to him. By his order dated May 25, 1976, the second appellant did not confirm the finding on revision of the general court martial. The charges made against the respondent, the finding and the nonconfirmation thereof were promulgated as required by Rule 71 of the Army Rules. Thereafter, the Chief of the Army Staff under Rule 14 of the Army Rules 1954 issued the impugned show cause notice dated November 12, 1976 stating that the Chief of the Army Staff had carefully considered the facts of the case as also the respondent's defence at the trial and being satisfied that a

416

fresh trial by a court martial for the said offences was inexpedient, he was of the opinion that the respondent's misconduct as disclosed in the proceedings rendered his further retention in the service undesirable. and called upon the respondent to submit his explanation and defence, if any, within twenty-five days of the receipt of the said notice. Along with the said notice copies of abstracts of evidence and the court-martial proceedings were forwarded to the respondent. The respondent, thereupon, filed in the High Court of Allahabad a writ petition under Article 226 of the Constitution of India being Civil Miscellaneous Writ No. 84 of 1976, which was allowed by a Division Bench of the said High Court. Hence the appeal by special leave

Allowing the appeal, the Court

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HELD: 1. Where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. If, on the other hand, the Chief of the Army Staff had the power in law to issue the said notice, it would not be open to the respondent to approach the court under Article 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature. This was, however, not a contention which could have been decided at the threshold until the court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having

held that the impugned notice was issued without any jurisdiction, the High Court was right in further holding that the respondent's writ petition was not premature and was maintainable. [420C-E]

2. Whether the Chief of the Army Staff was competent to issue the impugned notice of show cause depends upon the relevant provisions of the Army Act 1950 and the Army Rules 1954. Under Section 153 of the Army Act, no finding or sentence of a general, district or summary general, court martial shall be valid except so far as it may be confirmed as provided by the Army Act. Under Section ]60 of the Army Act, the confirming authority has the power to direct a revision of the finding of a court martial only once. There is no power in the confirming authority, if it does not agree with the finding on revision, to direct a second revision of such finding. In the absence of any such confirmation, whether of the original finding or of the finding on revision, by reason of the provisions of Section 153 the finding is not valid. Therefore, in the case of the respondent, the finding of the general court-martial on revision not having been confirmed was not valid. Equally, there is however, no express provision in the Army Act which empowers the holding of a fresh court-martial when the finding of a court-martial on revision is not confirmed. [427C-F]

3. Though it is open to the Central Government or the Chief of the Army Staff to have recourse to Rule 14 of the first instance without directing trial by a court-martial of the concerned officer, there is no provision in the Army Act or in Rule 14 or any of the other Rules of the Army Rules which
417
prohibits the Central Government or the Chief of the Army Staff from resorting in such a case to Rule 14. [429F-G]

In the present case, the Chief of the Army Staff had, on the one hand, the finding of a general court-martial which had not been confirmed and the Chief of the Army Staff was of the opinion that the further retention of the respondent in the service was undesirable and, on the other hand, there were three difference conflicting decisions of different High Courts on this point which point was not concluded by a definitive pronouncement of this Court. In such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the respondent under Rule 14, which he did. The action of the Chief of the Army Staff in issuing the impugned notice was, therefore, neither without jurisdiction nor unwarranted in law. [430B-D]

Capt. Kashmir Singh Shergill v. The Union of India & Another, Civil Writ No. 553 of 1974 decided on November 6, 1974 by Prakash Narain, J., approved.

G.B. Singh v. Union of India and Others , [1973] Crl. L.J. 485; Major Manohar Lal v. The Union of India and Anr., 1971 (1) S.L.R. 717; J.C. 13018 Subedar Surat Singh v. The Chief Engineer Projects (Beacon) C/o.56 A.P.O. AIR 1970 J. & K 179 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 663 of 1978.

From the Judgment and Order dt. 9.3.77 of the Allahabad High Court in Civil Misc. Writ No. 84/77.

Dr. Anand Prakash, V.B.. Saharaya and Miss A. Subhashini, for P the Appellants H. S. Parihar, for the Respondent.

The judgment of the Court was delivered by MADON,J. This Appeal by Special Leave granted by this Court is preferred against the judgment and order of a Division Bench of the Allahabad High Court allowing the writ petition filed by the Respondent under Article 226 of the Constitution of India and quashing a show cause notice dated November 12,1976 issued by the First Appellant, the Chief of the Army Staff, under Rule 14 of the Army Rules. 1954.

The facts which have given rise to this Appeal lie in a narrow compass. The Respondent is a permanent commissioned officer of the Indian Army holding the substantive rank of Captain and the acting rank of Major. In November 1975, he was posted in the Army School of Mechanical Transport, Faizabad. As a result of certain incidents which are alleged to have taken place on November 6 and 7, 1975, the Respondent was tried by a general court-martial on four charges. It is unnecessary to reproduce the charges made against the Respondent. The charge-sheet was dated January 20, 1976, and was issued by the Commandant, Ordinance Depot, Fort Allahabad. On January 24, 1976, the Respondent was ordered to be tried by a general court-martial. The Respondent pleaded not guilty and his trial took place at Lucknow before a general court-martial consisting of one Brigadier, two Majors and two Captains Both the prosecution and the Respondent led evidence. On March 13, 1976, the court-martial announced its finding subject to confirmation, the finding being "Not guilty of all the charges". The General Officer, Commanding Madhya Pradesh, Bihar and Orissa Area, the Third Appellant, who was the confirming authority, did not confirm the verdict and by his order dated April 3, 1976, sent back the finding for revision. The same general court-martial, therefore, re assembled on April 14, 1976, and after hearing both sides and taking into consideration the observations made by the Third Appellant in his said order dated April 3, 1976, adhered to its original view and once again announced the finding that the Respondent was ' Not guilty of all the charges". The said finding was also expressly announced as being subject to confirmation. The Third Appellant reserved confirmation of the finding on revision by a superior authority, namely, the General Officer, Commanding in-Chief, Central Command, Lucknow, the Second Appellant, and forwarded the papers to him. By his order dated May 25, 1976, the Second Appellant did not confirm the finding on revision of the general court- martial. The charges made against The Respondent, the finding and the non-confirmation thereof were promulgated as

required by Rule 71 of the Army Rules.

Thereafter the Chief of the Army Staff under Rule 14 of the Army Rules issued the impugned show cause notice dated November 12, 1976. It was stated in the said notice that the Chief of the Army Staff had carefully considered the facts of the case as also the Respondent's defence at the trial and being satisfied that a fresh trial by a court-martial for the said offences was inexpedient, he was of the opinion that the Respondent's misconduct as disclosed in the proceedings rendered his further retention in the service undesirable. The Respondent was called upon by the said notice to submit his explanation and defence, if any, within twenty-five days of the receipt of the said notice. Along with the said notice copies of abstracts of evidence and the court-martial proceedings were forwarded to the Respondent. The Respondent thereupon filed in the High Court of Allahabad a writ petition under Article 226 of the Constitution of India being Civil Miscellaneous Writ No. 84 of 1976, which, as aforesaid, was allowed.

It was the contention of the Respondent in his writ petition that under the Army Act, 1950 (Act No. 46 of 1950), and the Army rules there was an initial option either to have the concerned officer tried by a court-martial or to take action against him under Rule 14 and that in his case the option having been exercised to try him by a court- martial, the Chief of the Army Staff was not competent to have recourse to Rule 14 after the Respondent was - acquitted both at the time of the original trial and on revision. This contention found favour with the High Court. The High Court held that as the Respondent had in fact been tried by a court-martial which both at the time of the original trial and on revision had returned a verdict of 'not guilty, it could not be said that it was inexpedient to try the Respondent by a court-martial and, therefore, the impugned notice under Rule 14 was issued without any jurisdiction. At the hearing of the said writ petition a preliminary objection was raised by the Appellants that the said writ petition was not maintainable as being premature. The High Court held that as the impugned notice was issued without jurisdiction, it would be exposing the Respondent to jeopardy to require him to submit his reply to the said notice and to wait until his services were terminated.

The same contentions, as were raised before the High Court, were taken before us at the hearing of this Appeal. We will first deal with the Appellants' preliminary objection that the Respondent's writ petition was not maintainable as being premature. It was the Respondent's case that the Chief of the Army Staff had no jurisdiction to issue the impugned show cause notice after he had been again found not guilty by the court-martial on revision. The said notice expressly stated that the Chief of the Army Staff was of the opinion that the Respondent's misconduct as disclosed in the proceedings rendered his further retention in service undesir able and asked him to submit his explanation and defence, if any, to the charges made against him. If the Respondent's contention with respect to the jurisdiction of the Chief of the Army Staff to issue the said notice were correct, the Respondent was certainly exposed to the jeopardy of having his explanation and defence rejected and he being removed or dismissed from services. Were the said notice issued without jurisdiction, the Respondent would have then suffered a grave, prejudicial injury by an act which was without jurisdiction. Where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. If, on the other hand, the Chief of the Army Staff had the power in law to issue the said notice, it would not be

open to the Respondent to approach the court under Article 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature. This was, however, not a contention which could have been decided at the threshold until the court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having held that the impugned notice was issued without any jurisdiction, the High Court was right in further holding that the Respondent's writ petition was not premature and was maintainable.

Before considering the rival contentions with respect to the validity of the impugned notice, we may mention that a learned Single Judge of the Delhi High Court has held in the case of Capt. Kashmir Singh Shergill v. The Union of India and another (1) that the Chief of the Army Staff was competent to issue a show cause notice under Rule 14 even though the court-martial had affirmed its verdict on revision.

The answer to the question whether the Chief of the Army Staff was competent to issue the impugned notice depends upon the relevant provisions of the Army Act and the Army Rules to which we now turn.

Chapter IV of the Army Act, which consists of Section 18 to 24, deals with the conditions of service of persons appointed under (1) Civil Writ No. 553 of 1974 decided on November 6, 1974 by Prakash Narain, J.

the Act. Section 18 provides that every person subject to the Army . Act shall hold office during the pleasure of the President. Section 19 provides that subject to the provisions of the Army Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service, any person subject to the Army Act. Section 22 provides that any person subject to the Army Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed by rules made under the Act. Section 191 confers' upon the Central Government the power to make rules for the purpose of carrying into effect the provisions of the Army Act. Rule 14 of the Army Rules, 1954, provides as follows:

"14. Termination of service by the Central Government on account of misconduct-

(1) When it is proposed to terminate the service of an officer under Section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action:

> Provided that this sub-rule shall not apply:
>
> (a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or
>
> (b) where the Central Government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an ' opportunity of showing cause.

(2) When after considering the reports of an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by court- martial is inexpedient or impracticable, but is of the opinion that the further ' retention of the said officer in the service is undesirable the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government with the officer's defence and the recommendation of the Chief of the Army Staffs to the termination of the officer's service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's n service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be-

(a) dismissed from the service; or

(b) removed from the service; or

(c) called upon to retire; or

(d) called upon to resign.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may dismiss or remove the officer with or with out pension or call upon him to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any, admissible to him."

We are not concerned in this Appeal with a case where an officer has been convicted by a criminal court or with a case where the Central Government is satisfied that it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.A show cause notice was in fact issued to the Respondent by the Chief of the Army Staff. Under sub-rule (2) of Rule 14, the

foundation of the jurisdiction of the Central B, Government or the Chief of the Army Staff to issue a show cause notice is the satisfaction of the Central Government or the Chief of the Army Staff after considering the reports of an officer's misconduct that the trial OF the officer by a court-martial is inexpedient or impracticable and the opinion formed that the further retention of the officer in the service is undesirable.

The contention before us was that in the circumstances of this case it cannot be said that the trial of the Respondent by a court-martial was inexpedient or impracticable as in fact the Respondent had been tried by a court-martial. It was also submitted that on a true construction of Rule 14, the Central Government or the Chief of the Army Staff has an initial option to have the officer tried by a court-martial or to take action against him under Rule 14 and if it were decided that he should be tried by a court-martial, then action under Rule 14 was not permissible in case of his acquittal by the court-martial.

To test the correctness of these submissions, we must examine the provisions of the Army Act relating to court- martial. Section 108 provides for four kinds of courts- martial, namely.

(1) general courts-martial;

(2) district courts-martial;

(3) summary general courts-martial; and (4) summary courts-martial.

As the Respondent was tried by a general court-martial, we are not concerned here with any other type of courts- martial, Under section 109, a general court-martial may be convened by the Central Government or the Chief of the Army Staff or by any officer empowered in that behalf by warrant of the Chief of the Army Staff. Section 113 provides that a general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain. Section 117 provides for cases in which a court-martial can be dissolved. These cases are:

> (1) Where after the commencement of a trial the court- martial is reduced below the minimum number of officers required by the Army Act. In such a case the dissolution of the court-martial is mandatory. (2) If, on account of the illness of the judge-advocate or of the accused before the finding, it is impossible to continue the trial. In this case also the dissolution of the court-martial is mandatory.
>
> (3) If it appears to the officer who convened a court martial that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the court-martial. In this case, the dissolution of the court-martial is discretionary.

Sub-section (4) of section 117 expressly provides that where a court martial is dissolved, the accused may be tried again. Section 118 ' confers upon a general court-martial the power to try any person subject to the Army Act for any offence punishable thereunder and to pass any sentence authorized

thereby.

Section 121 provides as follows:

"121. Prohibition of second trial.-

When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections."

The Respondent was neither tried by a criminal court nor dealt with under any of the sections 80, 83, 84 and 85, most of which do not apply to an officer of his rank- He was, however, tried by a general court-martial which found him not guilty of any of the charges made against him. Under section 125, where a criminal court and a court-martial both have jurisdiction in respect of an offence, it is in the discretion of the officer commanding the army, army crops, division or independent brigade in which the accused person is serving or such other officer as may be prescribed by the Army Rules to decide before which court the proceedings shall be instituted. Under section 127, a person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence or on the same facts. There is, however, no provision for the trial by a court-martial for the same offence or on the same facts where a person has been convicted or acquitted by a criminal court. Sections 153, 154 and 160(1) provide as follows:

"153. Finding and sentence not valid, unless confirmed.-

No finding or sentence of a general, district or summary general, court-martial shall be valid except so far as it may be confirmed as provided by this Act.

> "154. Power to confirm finding and sentence of general court-martial.-
>
> The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.
>
> "160. Revision of finding or sentence,- (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the Confirming authority, may take additional evidence.

In this connection it will also be relevant to set out the provisions of Rules 68, 69, 70 and 11 of the Army Rules. These Rules provide as follows:

`68. Revision. (1) Where the finding is sent back for revision under section 160, the Court shall reassemble in open court, the revision order shall be read, and if the court is directed to take fresh evidence, such evidence shall also be taken in open court. The court shall then deliberate on its finding - in closed court. (2) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record the new finding, and if such new finding involves a sentence, pass sentence afresh.

(3) Where the sentence alone is sent back for revision, the court shall not revise the finding. (4) After the revision, the presiding officer shall date and y sign the decision of the court, and the proceedings, upon being signed by the judge- advocate, if any, shall at once be transmitted for confirmation.

"69. Review of court-martial proceedings.- The proceedings of a general court-martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer. The proceedings of a district court-martial shall be sent by the presiding officer or the judge- advocate direct to the confirming officer who must, in all cases. where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation." "70. Confirmation-Upon receiving the proceedings of a general or district court-martial, the confirming authority may confirm or refuse confirmation, or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings." "71. Promulgation-The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service. Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated."

It is pertinent to note that under Section 160 the confirming authority has the power to direct a revision of the finding of a court-martial only once. There is no power in the confirming authority, if it does not agree with the finding on revision, to direct a second revision of such finding. In the absence of any such confirmation, whether of the original finding or of the finding on revision, by reason of the provisions of section l 53 the finding is not valid. Therefore, in the case of the Respondent, the finding of the general court-martial on revision not having been confirmed was not valid. Could he, therefore, be tried again by another court-martial on the same charges ? Under Section 121, a person subject to the Army Act, who has been acquitted or convicted of an offence by a court-martial or by a criminal Court, is not liable to be tried again for the same offence by a court-martial. It can well be argued that by reason of the provisions of section 153 under which no finding or sentence of a general, district or summary general court-martial is valid except in so far as it is confirmed as provided by the Army Act a person cannot be said to have been acquitted or convicted by a court-martial until the finding of "guilty" or "not guilty" in his case has been

confirmed by the confirming authority. There is, however, no express provision in the Army Act which empowers the holding of a fresh court-martial when the finding of a court-martial on revision is not confirmed.

The decisions of three High Courts may be referred to in this connection. The first decision is that of Allahabad High Court in G.B. Singh v. Union of India and Others. (1) That was a case under the Air Force Act, 1950 (Act No. 45 of 1950). In that case, the officer was found guilty by a general court-martial and sentenced ,. to be dismissed from service. The finding and sentence was referred to the confirming authority. The confirming authority passed an order reserving the same for confirmation by superior authority and forwarded the proceedings to the Chief Of the Air Staff. The (1) [1973] Crl. L.J. 485 Chief of the Air staff passed an order not confirming the finding or sentence awarded by the court-martial. The finding and sentence which were not confirmed by the Chief of Air Staff were promulgated after the lapse of about ten months.A fresh general court-martial was convened to retry the office. On enquiry the officer was informed that the findings and sentence of the general court-martial had not been confirmed as it was found that the proceedings were not in order and, therefore, there was no valid order convicting or acquitting the officer. After considering the relevant provisions of the Air Force Act and the Air Force Rules, 1969, which are in pari materia with the corresponding provisions of the Army Act and the Army Rules, a learned Single Judge of the Allahabad High Court held that the effect of non-confirmation was that though the finding and sentence passed by the court-martial existed, they could not be put into effect unless they had been confirmed under the provisions of the Air Force Act, and that in such a case section 120 of the Air Force Act (which is in pari materia with section 121 of the Army Act) barred a second trial by a court-martial. In Major Manohar Lal v. The Union of India and Anr. (1) the petitioner was tried by a general court- martial which found him not guilty. The General Officer Commanding-in-Chief held the proceedings to be null and void on the ground that one of the members of the court-martial was of the rank of Captain and was thus lower in the rank to the petitioner and no certificate had been recorded by the officer convening the court-martial as required by Rule 40(2) of the Army Rules, that an officer of the rank of the petitioner was not available and he, therefore, ordered a retrial.A learned Single Judge of the Punjab and Haryana High Court held that under the Army Act and the Army Rules, a Captain was eligible to be made a member of a general court-martial and the mere fact that the convening officer did not append the certificate that an officer of the rank of the petitioner was not available did not make the constitution of the general court martial invalid or the finding given by it to be without jurisdiction or the proceedings of the trial before it to be null and void. He further held that as the petitioner had no say in the constitution of the general court-martial and had suffered the trial before it, the proceedings could not have been declared null and void on a highly technical ground. The learned Single Judge, therefore. came to the conclusion that the second trial of the petitioner (1) 1971(1) S.L.R. 717.

was without jurisdiction and the sentence imposed upon him in consequence of that trial was wholly illegal. In J.C. 13018 Subedar Surat Singh v. The Chief Engineer Projects (Beacon). Co. 56 A.P.O. (1).A Division Bench of the Jammu and Kashmir High Court held that though every finding of a general court-martial, whether of acquittal or of guilt, cannot be recorded as valid unless it is confirmed by the competent authority, the Legislature could not have reasonably intended that an officer convening a general court martial can go on dissolving such court-martials and reconstituting

them ad infinitum until he obtained a verdict or a finding of his own liking. The Division Bench further held that such a position would not only be against public policy and the ancient maxim "nemo debet bis vexari pro una et eadem causa" (no man ought to be twice vexed for one and the same cause) but would also reduce the provisions of the Army Act to a mockery and give an appearance of mala fides. According to the Jammu and Kashmir High Court, in such a case the proper course for the confirming authority would be to refer the case to its superior authority for confirmation.

This being the position, what then is the course open to the Central Government or the Chief of the Army Staff when the finding of a court-martial even on revision is perverse or against the weight of evidence on record? The High Court in its judgment under appeal has also held that in such a case a fresh trial by another court-martial is not permissible. The crucial question, therefore, is whether the Central Government or the Chief of the Army Staff can have resort to Rule 14 of the Army Rules. Though it is open to the Central Government of the Chief of the Army Staff to have recourse to that Rule in the first instance without directing trial by a court-martial of the concerned officer, there is no provision in the Army Act or in Rule l 4 or any of the other rules of the Army Rules which prohibits the Central Government or the Chief of the Army Staff from resorting in such a case to Rule 14. Can it, however, be said that in such a case a trial by a court-martial is inexpedient or impracticable? The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable, impolitic". The same dictionary defines "expedient' inter alia as meaning "advantageous; fit, proper, or suitable to the circumstances o the case". Webster's Third New International Dictionary also (1) A.I.R. 1970 J. & K, 179.

defines the term "expedient" inter alia as meaning "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances".

In the present case, the Chief of the Army Staff. had, on the one hand, the finding of a general court-martial which had not been confirmed and the Chief of the Army Staff was of the opinion that the further retention of the Respondent in the service was undesirable and, on the other hand, there were the above three High Court decisions and the point was not concluded by a definitive pronouncement of this Court. In such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the Respondent under Rule 14, which he did. The action of the Chief of the Army Staff in issuing the impugned notice was, therefore, neither without jurisdiction nor unwarraned in law.

In the result, this Appeal must succeed and is accordingly allowed and the judgment of the Division Beach of the Allahabad High Court under Appeal is reversed and the order passed by it is set aside. The writ petition filed by the Respondent in the Allahabad High Court, namely, Civil Miscellaneous Writ No. 84 of 1977, is hereby dismissed.

Before parting with this Appeal, we would like to observe that the alleged incidents in respect of which the Respondent was tried before the general court-martial took place nearly ten years ago.

We, therefore, feel that the Chief of the Army Staff should take into account the conduct and behaviour of the Respondent during the intervening period and if they have been in conformity with good order and military discipline and the high traditions of the Indian Army, he may consider the desirability of proceeding further in the matter.

In the circumstances of the Case, there Will be no order as to costs throughout.

S. R. Appeal allowed,