

PETITIONER:
OMBIR SINGH

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT 05/05/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 SCC Supl. (1) 273

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1.This appeal is directed against the order of the High Court of Delhi. The appellant was tried by Summary Court Martial and was sentenced to undergo nine months civil imprisonment and dismissal from service. The question of law raised is that Summary Court Martial that was constituted was not presided over by a Commanding Officer as required under Section 116 of the Army Act. The submission is that some of the records supplied to the appellant show that it was only an officer of the rank of a Captain that presided and he cannot be deemed to be a Commanding Officer. The High Court dismissed the writ petition observing that it had perused the record as well as the evidence and it is satisfied that the Summary Court Martial was presided over by Lt. Col. Sandhu, a Commanding Officer.

2.The learned counsel, however, submits that the records supplied to the appellant do not disclose the same fact. We have perused the records and we agree with the High Court that the Summary Court Martial constituted was presided over by Mr Sandhu, the Commanding Officer. Therefore, there is no force in the submission.

3.The learned counsel, however, submits that the appellant was released on bail by this Court and he has been in jail for a period of over five months and that it is not a case where the appellant may be sent back to jail at such distance of time. The act of indiscipline was committed sometime prior to 1980. So far as this aspect is concerned, it is for the Army Authority concerned to consider it whether the appellant should again be sent back to jail for serving out the remaining small portion of sentence or remit the same. The appeal is dismissed with these observations.

275