

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 1945/2024

Reserved on: 06.05.2026
Pronounced on: 14.05.2026
Uploaded on: 14.05.2026
Whether the operative part or full
judgment is pronounced: Full

Mushtaq Ahmad Malik, Age 36 years
S/O Farooq Ahmad Malik
R/O Lawaypora Bandipora
Through his father Farooq Ahmad Malik

...Petitioner(s)/Appellant(s)

Through: Ms. Nida Nazir, Adv.

Vs.

1. Union of India through Ministry of Sectary Defence,
New Delhi, India

...Respondent(s)

2. Chief of the Army Staff, IHQ Of Ministry Of Defence
(Army), New Delhi

3. Director (AG), Ministry Of Defence,
Department of Military Affairs New Delhi

4. Commanding Officer, 13 Engineer Regiment
C/O 56- APO Sonawar Srinagar

5. Lieutenant Officer Commanding 15 Corps,
C/O 56-APO

6. Major Adjnt; 13 Engineering Regiment,
C/O 56-APO Sonawar Srinagar.

Through: Mr Tahir Majid Shamsi, DSGI with
Mr. Faizan Ahmad Ganie, CGSC
Ms. Rehana Qayoom, Adv.
Mr Pawandeep Singh, Officer Incharge, Legal Cell (Army)

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Sanjeev Kumar: J

1. This petition filed by one Mushtaq Ahmad Malik under Article 226 of the Constitution of India seeks to challenge an order and judgment dated 23rd April 2024 passed by the Armed Forces Tribunal, Regional Bench, Srinagar

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at Jammu [“the Tribunal”] in OA No. 235/2023 whereby the appeal filed by the petitioner against order of his conviction passed by Summary General Court Martial has been dismissed on the ground that it was not accompanied by a certified copy of the order.

2. The impugned judgment passed by the tribunal is challenged by the petitioner primarily on the ground that the proceedings of Summary General Court Martial were not supplied to the petitioner by the respondents by taking shelter under Rule 147 of the Army Rules 1954 [“the Rules”].

3. It is contended that the tribunal could not have insisted for certified copy of the order of conviction and sentence passed by Summary General Court Martial when the copy whereof was never supplied to the petitioner. Additionally, the petitioner has also thrown challenge to the constitutional validity of Rule 147-A on the ground that its provisions are violative of Article 14 and 21 of the Constitution of India and that the protection available under Article 33 of the Constitution is available to the Act/Acts of legislature and does not extend to subordinate legislation or the rules framed under the Army Act 1950 [“the Act”].

4. The writ petition is contested by respondents. It is submitted by respondents that in view of clear provisions of Rule 147-A, the copies of proceedings of Summary General Court Martial may be denied in a case where Central Government certifies that it is against the interest of security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under Rule 147. It is thus submitted that in view of the aforementioned certificate issued by the Central Government, the petitioner was denied the copies of Summary General Court Martial proceedings. The copy of the certificate issued by the Central Government

was supplied to the petitioner vide Communication dated 31st May 2023. The constitutionality of Rule 147-A is defended by placing reliance upon the provisions of Article 33 of the Constitution of India.

5. Having heard learned counsel for the parties and perused the material on record, we deem it appropriate to first set-out Rule 147 and 147-A of the rules hereinbelow:

147. Right of person tried to copies of proceedings:-

[Every person tried by a Court-Martial (other than summary Court-Martial) shall, after the proceedings have been signed by the presiding officer and in the case of summary Court-Martial the officer holding the trial, and before they are destroyed, on a request made by such person in writing to the Court or the officer holding the trial or the person having the custody of his proceedings, be entitled for the supply of a copy of such proceedings, within a reasonable time and free of cost, including the proceedings upon revision, if any.]

[147-A. Copy of proceedings not to be given in certain cases:-Notwithstanding anything contained in rule 147, if the Central Government certifies that it is against for interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy:

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a Court of law in relation to the finding or sentence, it shall permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely:-

- (a) the inspection shall be made at such times and such places as the Central Government or any authority authorised by it, may direct; and
- (b) the person allowed to inspect the proceedings shall, before such inspection furnish-
- (i) an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a Court of law in relation to the said finding or sentence; and
- (ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923), if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.]

6. From reading of Rule 147, it clearly transpires that every person who is tried by a court-martial (other than summary court-martial), is entitled, on request made in writing, for the supply of copy of court-martial proceedings within a reasonable time and free of cost.

7. Section 147-A is an exception to Rule 147 and lays down that if the Central Government certifies that it is against the interests of security of State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under Rule 147, the person tried by a court-martial shall not be furnished the copy of such proceedings.

8. The person demanding the copy of the proceedings, shall be permitted inspection of the proceedings, either in person or through his legal advisor if

he intends to submit a petition in accordance with the Army Act or submit any action in the court of law in relation to finding of sentence of the court martial. The inspection is, however, subject to certain conditions which are enumerated in section 147-A itself. From the reading of Rule 147-A, it further transpires that access to the proceedings of court martial culminating into a finding or sentence are not completely barred though in a case where the Central Government certifies that it is against the interest of security of State or friendly relations with foreign states to supply the copies of such proceedings, the person tried by court martial shall be denied the copy of such proceedings. However, such person is permitted either in person or through his legal advisor to inspect the proceedings where he is desirous of submitting a petition to an authority under the Act or institute any action in a court of law.

9. The question that arises for determination in this petition, however, is *whether Section 147-A which prima facie tramples the right of a person to fair trial and take recourse to appropriate legal proceedings and, thus, offends Article 14 and 21 of the Constitution of India is saved by Article 33 of the Constitution of India.* Article 33 which is contained in Part-III of the Constitution of India is itself a part of the Chapter of Fundamental Rights.

10. Before we proceed further, it would be appropriate to set-out Article 33 hereinbelow:-

[33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc. - Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

11. From plain reading of Article 33, it is abundantly clear that the Parliament is empowered to modify or restrict the rights conferred by Part-III of the Constitution in their application to the Armed Forces. This, however, can be done by the Parliament by making law to determine as to what extent any of the fundamental rights shall, in their application to the members of the armed forces, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of the discipline among them. The Rules of 1954 are framed by the Government in the exercise of powers conferred by Section 191 of the Army Act, 1950, and all other powers enabling in this behalf. Section 191 of the Army Act gives power to the Central Government to make rules for the purpose of carrying into effect the provisions of the Act.

12. The power to frame rules conferred upon the Central Government *inter alia* includes the laying down of procedure to be observed in trials by court martial and the appearance of legal practitioners thereat as well as for confirmation, revision and annulment of, and the petitions against the findings and sentences of court-martial, etc. It is in the exercise of these

wide powers conferred upon the Central Government, the Army Rules of 1954 have been framed.

13. It is not the argument of the learned counsel for the petitioner that Rule 147-A is beyond the rule-making power of the Government. What is however, strenuously argued before us is that the fundamental rights in relation to their application to the armed forces can be curtailed or abrogated only by law made by the Parliament i.e., by an act of legislature and not by the rules framed by way of subordinate legislation.

14. From a careful reading of Article 33, it would become evident that the provision talks about the law made by the Parliament and not the act of Parliament. The rules framed by the Government under the authority delegated under the Act is nothing but a law made by the Parliament.

15. The Central Government framed the Army Rules in the exercise of power conferred upon it by the Parliament in terms of Section 191 of the Army Act, 1950. It is, therefore, an argument in despair that the fundamental rights in relation to armed forces can be abrogated or restricted only by an Act of Parliament. To emphasize, we would like to reiterate that the expression “law” used in Article-33 encompasses the rules made by the Government under the delegated authority conferred upon it by the Act framed by the Parliament.

16. In view of the clear provisions of Article-33, the validity of Rule 147-A of the Rules cannot be assailed on the ground that it violates Article 14 and 21 of the Constitution of India.

17. The issue with regard to the constitutional validity of Rule 147-A was adjudicated upon by a Single Bench of this court in the case of **Mulkh Raj vs. Union of India & Ors. (1983) CRILJ 1794**. wherein the learned Single

Bench of this court after considering the rival conventions of the parties upheld the constitutional validity of Rule 147-A. We fully concur with and give our imprimatur to the view taken by the learned Single Judge in **Mulkh Raj** (supra).

18. Article 21 which, as argued by learned counsel for the petitioner, is offended by Rule 147-A merely provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. As is held in the famous case of **Maneka Gandhi vs. Union of India AIR 1978 SC 597** the procedure established by law that deprives a person of his life or personal liberty must be a valid law and a law would be valid only if it is just, fair and reasonable. Rule 147-A framed by the Central Government under Section 191 of the Army Act is indisputably a law made by the Parliament and, therefore, protected by Article 33 of the Constitution of India. Although, the term “law”, used in Article 33, has not been separately defined, yet we can seek assistance to interpret the term by making a reference to Clause 3(a) of Article 13, which for quick reference is reproduced hereunder:

Article 13(3) (a): In this Article, unless the context otherwise requires:-

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

19. It is thus evident that the law for the purpose of Article 13 includes the Ordinance bye-law, rule and regulations having the force of law in the territory of India.

20. Different meaning to the term ‘law’ used in Article 33 of the Constitution of India is neither called for nor desirable.

21. From reading of the scheme of the Act and the rules framed thereunder, there is enough inbuilt mechanism provided to afford a fair and adequate opportunity to the person before the court martial. It is only in a case where the Central Government certifies that providing of copy of the court martial proceedings to the person tried by it may be against the interest of security of State or the friendly relations with foreign States, it shall refuse to furnish such copy to the person tried by the court-martial.

22. The person like petitioner who has been tried by the court-martial cannot feign ignorance about the proceedings conducted by the Court Martial, for, not only he is given full opportunity to participate in such proceedings, but is also ensured all the safeguards so as to enable such person to contest the proceedings and put up his defense.

23. We would not like to go into the various provisions of the Army Act and the rules framed thereunder which act as sheet anchor for the person tried by the court martial against any arbitrariness and procedural unfairness in the proceedings.

24. In view of the aforesaid discussion, we are of the considered opinion that Rule 147-A is protected by Article 33 of the Constitution and, therefore, cannot be said to be *ultra virus* the Constitution. Having said that we cannot lose sight of the fact that the tribunal has dismissed the appeal filed by the petitioner against his conviction and sentence by the Summary General Court Martial on the ground that it did not accompany the certified copies.

25. Mr. Tahir Shamsi has produced the relevant record before us, a perusal whereof indicates that the father of the petitioner was intimated that his son, the petitioner, has been tried by the Summary General Court Martial on 5th October 2022. The required details like offence for which sentence has been

awarded and the punishment awarded etc. has also been shared with the father of the petitioner.

26. Be that as it may, having regard to the fact that in the instant case, the petitioner was legitimately denied the copies of the proceedings of the court martial under Rule 147-A, the tribunal ought not to have insisted for the certified copy of the order of conviction and sentence. The tribunal ought to have summoned the record of the General Court Martial Proceedings in a sealed cover and examined the appeal of the petitioner on merits.

27. The tribunal has avoided the performance of its statutory obligation of considering the appeal of the petitioner on merits and, therefore, the order impugned passed by the tribunal is not sustainable in law.

28. For the foregoing reasons, the order passed by the tribunal impugned in this petition is **set-aside**. The appeal filed by the petitioner is restored to its original number.

29. The tribunal shall proceed to consider the appeal on merits after summoning the record of the Summary General Court Martial and shall in strict compliance with Rule 147-A of the rules provide opportunity to the petitioner or his counsel to inspect the proceedings subject, of course, to the conditions laid down in Rule 147-A itself. The appeal of the petitioner shall be determined on merits and decided as expeditiously as possible.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
14.05.2026
Altaf

Whether approved for reporting? Yes