

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

2.

OA (Appeal) 670/2026

Col Suraj Shumsher Singh ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Anand Kumar, Advocate with  
Mr. Akshit Anand, Advocate  
For Respondents : Mr. Karan Singh Bhati, Sr. CGSC  
Maj Abhishek Kumar, OIC legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
25.02.2026

The applicant vide the present OA makes the following prayers:-

*A. Summon the "Original Handwritten Records" of "evidence" of the Court Martial Proceedings as well as the "Typed Copy" of the records held with Judge Advocate, Respondent No. 6.*

*B. Set aside the "Evidence" of the witnesses so recorded in the "Typed Copy" of the proceedings and declare the same to be illegal due to non-compliance of the orders passed by AFT Kolkata and also against the provisions of Sec 78 & 79 of the BSA, 2023 and*

*C. Direct Respondents to order fresh trial and record the evidence of witness as directed by AFT Kolkata judgments in T.A. No. 211/2010 and O.A. No. 61 of 2012 and*

*D. Direct the COAS, Respondent No. 2 to issue general order to the Court Martials to comply with the direction passed by Hon'ble AFT Kolkata Bench in T.A. No. 211/2010 and O.A. No. 61 of 2012 and/or*

*E. Pass any such order(s)/direction(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. Along with the same is a prayer seeking grant of interim relief to the effect:-

*“(a) Stay the proceedings of the GCM until disposal of this application and/or*

*(b) Pass any other order or direction that this Hon'ble Tribunal may consider appropriate under the facts and circumstances of the present case.”*

3. Notice of the OA and the interim prayer is issued to the respondents and accepted on their behalf. The response to the OA and to the interim prayer be submitted by the respondents within a period of two weeks.

4. It is at the outset on behalf of the respondents brought to the notice of the Bench of this Tribunal that the recording of the statement of the prosecution witnesses in the GCM being conducted against the applicant has been completed and the statement of the applicant under Army Rule 58(2) has since been recorded and the matter is at the stage of recording of the defence witnesses. We have already issued notice of the prayer made by the applicant seeking the grant of the interim prayer which is the prayer seeking the stay of the proceedings of the GCM until

disposal of the application in relation to which it is considered appropriate that an adequate hearing is granted to both sides.

5. The attention of the Bench of the Tribunal is also drawn on behalf of the respondents to the order dated 05.01.2026 in OA 05/2026 filed by **the very same applicant herein** which OA was disposed of vide order dated 05.01.2026 observing to the effect that a prima facie a case of trial having been made out, a charge sheet had been issued to the applicant and the GCM convened with it *inter alia* having been observed that without expressing any opinion of the merits of the matter, the said OA was dismissed with liberty granted to the applicant to raise all such grounds as well as those raised before the GCM and the trial and thereafter to challenge the final findings after the trial is concluded.

6. On behalf of the applicant, it has been submitted however, that the proceedings in OA 5/2026 which has been disposed of vide order dated 05.01.2026 is related to the pleas raised on behalf of the applicant *qua* violation of Rule 45, 51 and 53 of the Army Rules submitting to the effect that the GCM had been completed illegally and the complaint against him was frivolous and unsustainable and that no action could have been taken against him at the preliminary stage when the GCM proceedings were pending.

7. It is submitted on behalf of the applicant that in the instant case i.e. in OA (Appeal) 670/2026, the prayers made by the applicant relates to the non-compliance of the orders of the Hon'ble AFT (RB) Kolkata and although the Hon'ble AFT (RB) Kolkata in the case of *Ex Hav/Clerk Rajendra Kumar Mishra vs. Union of India and Ors.* in TA 211/2010 disposed of vide order dated 02.04.2014 as well as the order of the AFT (RB) Kolkata in OA 61/2012 with OA 60/2012 dated 16.05.2014 in *Sheo Shankar Prasad Singh vs. Union of India & Ors.* with it having *inter alia* been submitted on behalf of the applicant that the said two orders have been upheld by the Hon'ble Supreme Court vide orders dated 10.08.2015 in C.A. No. 19180/2015 in the case of *Union of India & Ors. vs. Rajendra Kumar Mishra & Anr.* and having also been upheld vide order dated 04.03.2016 in CRL.M.P No. 17226-17227 in the case of *Union of India & Ors. vs. Sheo Shankar Prasad Singh and etc.* whereby it was observed to the effect:-

*“Heard.*

*Apart from the fact that there is an inordinate delay of 291 days in the filing of this application for grant of leave to appeal for which no cogent explanation is forthcoming from the application for us to condone the same, we see no substantial question of law of general/public importance arising for our consideration. The prayer for condonation is accordingly declined and the application for leave to appeal dismissed ground of limitation as also on merits.”*

8. *Inter alia*, the submission thus made on behalf of the applicant is to the effect that the depositions of the prosecution witnesses have not been signed by the witnesses and that the applicant has been prejudiced thereby by the manner of the recording of the depositions and thus the implicit conducting of the GCM proceedings, despite compliance with the directions of the Tribunal i.e. of the AFT (RB), Kolkata, having been upheld by the Hon'ble Supreme Court.

9. It has however been submitted on behalf of the respondents that the aspect of the recording of the depositions of the witnesses without signatures thereon has been considered vide the order dated 30.05.2025 in MA 1261/2025 and MA 1262/2025 and OA (Appeal) 326/2025 in the case of *Col Vikas Pandey vs. Union of India & Ors.* of the order of the AFT (RB) Chandigarh at Chandimandir, wherein it has been observed to the effect:-

*“The applicant is being proceeded against in accordance with law for the offences under Section 52 (f) of the Army Act, 1950 (hereinafter referred to as the Act) and Section 13 (1) and Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act, 1988). The allegation against him is that he opened Regimental Funds Account in Yes Bank, Leh Branch with fraudulent intention. The said account was used to receive cash from the civilian vendors running into more than 1.5 Crore. The charges against him are being tried by a Summary General Court Martial. During the pendency of the said proceedings, an application dated 21.05.2025 (Annexure A-3) was filed alleging serious illegalities committed by the Court. Illegalities alleged*

were non-obtaining of signatures of the witnesses being examined even though a request for the same was made by them as well as the Presiding Officer not signing on the proceedings on every page. The application was rejected vide order dated 28.05.2025 by holding that under the scheme of the Army Act and Rules, the witness is asked at the end of his deposition whether the contents thereof should be read over or not? If the witness so desires the contents are read over.

Further, witness confirms at the end of deposition that the same has been correctly recorded

2. It was also found that no witness had been asked for signature to be subscribed to his evidence. Only one witness sought clarification and the same was provided. In military law, there is no policy mandating signing of deposition by the witnesses. This order is under challenge in the present appeal.

3. Learned counsel for the appellant has relied upon judgments dated 02-04-2014 passed by the Regional Bench, Kolkata in TA No.211 of 2010 Ex. Havildar/Clerk Rajendra Kumar Mishra Vs Union of India & others and 16-05-2014 passed by the said Bench in OA No.61 of 2012 in Ex. Lt. Col. Sheo Shankar Prasad Singh Vs Union of India & others. The submission based on the said judgments is that the Regional bench, Kolkata had found that provisions of the Code of Criminal Procedure are applicable even in a military trial. According to the Code of Criminal Procedure, the testimony of every witness has to be signed by him and further counter-signed by the Presiding Officer. Appeal filed against the said judgments has been dismissed by the Hon'ble Supreme Court vide order dated 10.08.2015 and 04.03.2016 respectively. The delay has been condoned and the appeal has been dismissed because the Bench did not find the existence of any substantial question of law of general public importance. Copies of the said orders are on record as Annexure A-5 and Annexure A-6 respectively. Thus, the law declared by the Regional Bench, Kolkata has been upheld by the Hon'ble Supreme Court. Learned counsel has also relied upon order dated 04.04.2025 passed by the Principal Bench, in

*OA (Appeal) No.926 No. 926 of 2025, whereby relying upon the deersion of Regional Bench, Kolkata, further proceedings in the Count Martial have been stayed*

*4. The submissions made by learned counsel cannot be accepted firstly, if the Court Martial has committed an illegality. in our opinion, the appellant is not adversely affected. He should 'in fact' permit the illegalities to carry on so that the findings and sentence awarded by the Court Martial are rendered illegal. Thus, the logic behind filing the application dated 21.05.2025 (Annexure A-3) eludes us.*

*5. Secondly, the submissions cannot be accepted even on merits, in view of the judgment of the Hon'ble Supreme Court in Ajmer Singh Vs Union of India & Ors, 1987, AIR 1646. In the said case, the appellants before the Hon'ble Supreme Court were convicted by a General Court Martial and sentenced to various terms of Rigorous Imprisonment. Section 167 of Army Act. 1950 (hereinafter referred to as the Act) provides that term of sentence shall be reckoned to commence on the date on which the original proceedings are signed by the Presiding Officer. Section 428 of the Code of Criminal Procedure provides for set off of the period of detention undergone by an accused during investigation, enquiry or trial against the period of imprisonment and thus, the question arose regarding the applicability of Section 428 of the Code of Criminal Procedure. Four separate petitions were filed before the High Court which were decided in view of an earlier Division Bench ruling of the High Court in Ram Labhaya Sharma Vs. Union of India & Ors. in Criminal Writ No.40 of 1975 decided on 12.12.1975, whereby it was held that Section 428 of the Code of Criminal Procedure does not apply to a military trial. Keeping in view Section 5 of the Code of Criminal Procedure, it was held that a special law conferring special jurisdiction and powers will prevail over the general provisions of the Code of Criminal Procedure. Thus, the appeals filed before the Hon'ble Supreme Court were dismissed. This judgment was not brought to the notice of the Regional Bench, Kolkata, while passing the aforementioned orders. The same was also not brought to the*

*notice of the Hon'ble Principal Bench when it passed order dated 04.04.2025. Thus, the aforementioned judgments/orders are rendered per incuriam.*

*6. Dismissal of the appeals filed by the Union of India against the judgment of the Regional Bench, Kolkata does not amount to upholding the law laid down by the said judgments. It only means that the Supreme Court has not found the case to be fit enough for interference. If a speaking order had been passed after hearing both sides, the situation would have been different.*

*7. For the foregoing reasons, we do not find any merit in the appeal. The same is accordingly dismissed.*

*8. Misc. Application, if any, also stands disposed of.”*

10. It is further submitted on behalf of the respondents that the proceedings in OA (Appeal) 926/2025 vide order dated 08.05.2025 in the case of *Lt Col Ajay Kumar (Retd.) vs. Union of India & Ors.* relate to an interim order whereby it has been directed that no Court Martial with regard to that applicant would proceed without the leave of the applicant in which there are observations vide order dated 08.05.2025 to the effect:-

*Having heard learned counsel for the parties, we find that the procedure laid down for conduct of Court Martial particularly in the matter of recording of evidence and statement of witnesses as laid down by the AFT, Regional Bench, Kolkata in TA No.211/2010 (W.P No.3075 (W) 2006) in the case of Ex Hav/Clk Rajendra Kumar Mishra Vs. Union of India decided on 02.04.2014 and further followed in various others cases has now got approval of the Hon'ble Supreme Court by virtue of dismissal of a SLP filed by the Union of India and, therefore, the respondents are now duty bound to conduct the Court Martial proceedings particularly in the matter of recording of evidence and statement of witnesses in accordance to the procedure laid*

*down by the Regional Bench, Kolkata in the case of Ex Hav/Clk Rajendra Kumar Mishra (supra).*

*2. That apart, the judgement by a Division Bench of the Hon'ble Calcutta High Court and followed by the AFT, Regional Bench, Kochi is a precedent which is binding on this Tribunal and this Bench also. Therefore, there cannot be any deviation from the same, particularly now, when the SLP filed by the respondents has been dismissed.*

*3. In view of the above, on a query made as to what procedure is being followed, we are informed, on instructions, that the matter has been referred to the highest authority and a decision is yet to be taken. In our considered view, once a law has been settled and a judicial pronouncement has been issued, the same has to be followed and the authorities have no way to wriggle out of the procedure laid down particularly when the highest Court has upheld the same. However, as the Court Martial proceedings in the present case is stayed, we direct that no Court Martial proceedings shall continue till a decision in this matter is taken and the respondents are also directed to indicate as to whether any guidelines have been issued in the matter or they propose to follow the procedure laid down by the AFT, Regional Bench, Kolkata in the case of Ex Hav/Clk Rajendra Kumar Mishra (supra).*

*4. List the matter on 01.08.2025.*

*5. No Court Martial with regard to the applicant shall proceed without leave of this Tribunal.*

*6. A copy of this order be provided 'DASTI' to learned counsel for the parties."*

and that likewise prior to the order dated 08.05.2025 vide order dated 04.04.2025 it had been directed to the effect:-

*“XXX*

*We have heard learned counsel for the parties on the issue and we find that the question as to whether the Court Martial is being conducted in accordance with law laid down in the three cases as referred to hereinabove and decided by the Regional*

*Bench, Kolkata is being followed or not has to be examined. Merely because two other cases are pending and in those cases there is no interim protection, it cannot be a ground for denying indulgence into the matter in this application.*

*Once a coordinate bench of this Tribunal i.e., Regional Bench, Kolkata has laid down specific procedures to be followed for the purpose of recording of evidence in a Court Martial, the respondents are duty bound to follow the same, until and unless the law laid down by this Tribunal is challenged, modified or set aside by the Hon'ble High Court or the Hon'ble Supreme Court.*

*Prima facie, taking note of the allegations made in the application and with a view to examine as to what procedure is being followed in conduct of the trial/Court Martial, we issue notice to the respondents. They are directed to file their objection or reply if any within four weeks and till we are satisfied that the procedure laid down by the Regional Bench, Kolkata is being complied with, we direct that the proceedings in the Court Martial shall be kept in abeyance and shall not proceed without leave of this Tribunal.*

*A copy of this order be provided DASTI to learned counsel for both the parties.*

*Re-list on 22.04.2025.”*

The proceedings in OA (Appeal) 926/2025 are pending before Hon'ble Court No. 1.

11. We have also taken into the account the factum that vide judgment dated 12.08.2025 in CRWP (C) 6984/2025 (O&M) the Hon'ble High Court of Punjab and Haryana in *Colonel Vikas Pandey vs. Union of India & Ors.* seized with the very same issue in which the submissions were made therein by the petitioner thereof that after recording the statement made by the witnesses, the same had not been signed by them on all the pages and it was

highly probable and that same may be manipulated so as to pass an adverse order against the petitioner, the Hon'ble High Court of Punjab and Haryana vide judgment dated 12.08.2025 vide Para 5 thereof has observed to the effect:-

*“5. Keeping in view the totality of the circumstances, the present petition is disposed of with the direction that in case, the petitioner is aggrieved in any manner against the final order passed under the Court Martial and the petitioner intends to avail the remedy of an appeal before the competent authority, the petitioner will be free to raise all the objections including the one raised in the present petition as well. In case, any objection or plea is taken that the statement made by the witness has not been signed by them on all the papers and the same has caused any prejudice to the petitioner or, the said witness statement has been manipulated in any manner, due consideration will be given by the appellate authority on the said plea and the said issue will be decided keeping in view the evidence brought on record by the petitioner to support the said assertion or, the evidence brought on record by the respondent to deny or rebut the said assertion.”*

*5. With the above directions, the present petition is disposed of.”*

12. Counsel for the applicant has further drawn the attention of the Bench of this Tribunal to the Court Martial Proceedings conducted on 16.05.2023 in relation to **Formerly No. 15214355M Shri Yamanappa Kamari Gunner ((Lance Naik Operator) Yamanappa Kamari of 35 Field Regiment Attached with 851 Light Regiment** in which vide observations in Para 23 thereof, it has been observed in relation to issue Nos. (a), (b), (c) and (d) to the effect:-

*“(a) First Issue. The Court decides that the statements of all witnesses shall be duly signed and dated hereinafter in the interest of justice and fair play.*

*(b) Second Issue. The Court decides that the typed copies of the court martial proceedings from the original manuscript taken down by the Judge Advocate shall be authenticated by the Presiding Officer and the Judge Advocate by affixing their signatures on each and every page of the proceedings hereinafter so as to ensure the accuracy of the proceedings.*

*(c) Third Issue. The Court decides that the original manuscripts of the proceedings being available with the Judge Advocate may be hereinafter inspected by any of the two parties and no specific direction is being made in this regard.*

*(d) Fourth Issue. The Court decides that all members of the Court being well versed in Hindi language, there is no requirement of any interpreter for translation of evidence of the witnesses from Hindi to English.”*

13. *Qua* the proceedings of the said GCM dated 16.05.2023, it was thus submitted on behalf of the applicant that where the respondents themselves in the said proceedings dated 16.05.2023 have adhered to the guidelines and directions laid down by the Hon’ble AFT (RB) Kolkata in the two cases, *Ex Hav/Clerk Rajendra Kumar Mishra vs. Union of India and Ors. & Sheo Shankar Prasad Singh vs. Union of India & Ors.*, it is not open to the respondents now to retract from the same. As observed hereinabove we have already issued notice of the OA as well as of the interim prayer made in the present OA to the applicant and the issue requires an effective detailed adjudication.

14. Taking into the account the stage of the GCM proceedings in the instant case, we do not consider it appropriate to stay the GCM Proceedings presently. However, in as much as it has been submitted on behalf of the respondents that the matter is at the stage of recording of the statements of the defence witnesses, the respondent authorities whilst conducting the GCM proceedings shall ensure that the statements of the defence witnesses produced by the appellant herein are all duly signed by the witnesses and dated by the witnesses in the interest of justice and fair play and the witnesses are directed to sign each of the pages of the said depositions.

15. We are not directing the putting of the signatures of the Presiding Officer conducting the GCM on the depositions of the defence witnesses, presently in view of the judgment dated 06.12.2025 of the Hon'ble High Court of Delhi in W.P. (C) 1864/2025 and W.P. (C) 1865/2025 both in the case of ***EX. Major General M.S. JASWAL vs. Union of India & Ors.***, in view of the observations in Para 27 thereof which read to the effect:-

***“27. Rule 67(2) of the Army Rules***

***Rule 67(2) of the Army Rules specifically requires the Presiding Officer to date and sign the sentence pronounced after conclusion of the GCM proceedings, and provides that such signature would authenticate the whole of the proceedings. There is, therefore, no requirement of the Presiding Officer of the GCM signing day to day proceedings, or even any interim decision***

*taken during the course of the GCM, including the decision on the special plea of jurisdiction under Rule 51 of the Army Rules.”*

16. The respondents shall however ensure compliance of the directions hereinabove *qua* taking of the signatures of the defence witnesses on each page of the deposition of the said defence witnesses which are directed to be dated.

17. In view of the factum that the matter in issue is substantially in issue before Hon’ble Court No. 1 in OA (Appeal) 926/2025 and as OA 5/2026 filed by the very same applicant herein was also before the Hon’ble Court No.1 which was disposed of vide order dated 05.01.2026, subject to orders of the Hon’ble the Chairperson, the proceedings of the present matter be placed before the Hon’ble Court no. 1 on 19.03.2026.

Copy of this order be given *DASTI*, to the respondents for compliance of directions.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT GEN C.P. MOHANTY)  
MEMBER (A)

/NMK