

13: No explanation has been offered as to why the witnesses concerned could not be examined. ... *The principles analogous to the provisions of the Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. No reason has been assigned as to why the named witnesses who only could prove the charges had not been examined.* Indisputably, they were the prime witnesses.

14: *The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review. Before a court martial proceeding is convened, legal requirements therefor must be satisfied. Satisfaction of the officer concerned must be premised on a finding that evidence justified a trial on those charges. Such a satisfaction cannot be arrived at without any evidence. If an order is passed without any evidence, the same must be held to be perverse.*

Rajiv Arora v. Union of India **(2008) 15 SCC 306**