

**IN THE ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**TA/435/09  
IN W.P.C. No.1945/1999**

**HANS RAJ SINGH (EX ARMY GNR COOK)  
S/O. SH. GIRRAJ SINGH, VILLAGE MADAK  
POST OFFICE, HAITAL PUR  
DISTT. ALIGARH (U.P.)**

**THROUGH : SH. BISHRAM SINGH, ADVOCATE**

**...PETITIONER**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH  
THE SECRETARY  
MINISTRY OF DEFENCE  
SOUTH BLOCK  
NEW DELHI.**
- 2. THE CHIEF OF ARMY STAFF  
ARMY HEADQUARTERS  
SOUTH BLOCK, DHQ POST OFFICE  
NEW DELHI.**
- 3. COL P.P.SEHGAL  
COMMANDING OFFICER  
47 AIR DEFENCE REGIMENT  
C/O 56 A.P.O.**

**THROUGH : MS. RASHMI SINGH, ADVOCATE  
CAPT. ALIFA AKBAR**

**...RESPONDENTS**

**CORAM :**

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER  
HON'BLE SH. S.S.DHILLON, MEMBER**

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**JUDGMENT**  
**DATED : 03.12.2009**

1. This petition has been brought for quashing the order dated 31.07.1997 whereby the petitioner was dismissed from service and simultaneously the prayer has been made that he be provided other benefits which are permissible under the law. It is submitted that he was not afforded any opportunity to present his case. Moreover the statement of witnesses in the Summary of Evidence was taken at his back. He was not afforded opportunity to cross examine those witnesses. The Learned Court (SCM) recorded the plea of guilt of the accused/petitioner without following the procedure of obtaining the signature pursuant to the Army instructions sometime issued in the year 1984 and the reference of which was also made by Delhi High Court in W.P.C.No.5714/07 in the case of Mahinder Singh Vs. Union of India which was also affirmed by the Apex Court in SLP No.4695/09 and the Department in that case was also required to ensure the compliance given by the Delhi High Court in that case. Moreover the plea of guilt which has been recorded during the course of trial of the petitioner, there is no such endorsement from the side of the court that at the time of recording of the evidence, the accused/petitioner was advised inconsonance with the provisions as contained under Rule 115 (2A) of the Army Rule. It is said that the entire



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case file was fabricated in the SCM proceedings and the petitioner was wrongly held guilty for the fabricated charges also.

2. This petition has been resisted by the respondents and it is said that all the procedures for the completion of the SCM Proceedings were taken care and the accused/petitioner had been given full opportunity to cross examine the witnesses. Even the accused/petitioner for these charges admitted his guilt and also signed the document to that effect. Under such circumstances, now to say on his part with regard to non compliance of provisions of Army Act and Rules would not in any way rebut the presumption with regard to proper conduct of proceedings by the court. It is also said that in the end of the proceedings of the court, certificate was also given which has also been appended with the Counter Affidavit testifying the compliance of provisions of the relevant rules.

3. In order to appreciate the salient points raised by the Learned Counsels for the parties, a brief resume of the facts may be made. The petitioner was detailed on 22.07.1996 for performing the duties of cook for 3-4 days in Kendriya Vidyalaya No.1 at Jalandhar. On 24.07.1996, Ms. Sneha Mandal along with other her other classmates was playing in the school playground. At about 1100 hours on the pretext that the petitioner has to select the participants for gymnastic show, being

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organised on 31.07.1996 he took Ms. Sneha Mandal and other girls on parallel bars and told them to spread their legs on the bar and move forward. At this stage, petitioner inserted his right hand finger into the private part of Ms. Sneha Mandal. She had severe pain and started bleeding. At about 1140 hours on the same day Ms. Sneha Mandal complained to her father Sh. V. Mandal about the incident. His father took his daughter to Ms. Sushma who is one of the teachers in that school and then contacted Sh. Manjeet Singh, the Principal of that school and narrated the entire incident. After hearing, the principal called all the four cooks in his office out of which petitioner was identified by Ms. Sneha Mandal. Ms. Sneha Mandal was also sent for treatment to Military Hospital, Jalandhar Cantt. for medical check up and thereafter she was given medical aid. In the support of the prosecution version, the prosecution examined Ms. Sneha Mandal as PW1. At the time of recording of Summary of Evidence she gave categorical narration of the incident that how she with other girls was persuaded to come and show her performance. She stated that thereafter the accused/petitioner started touching private parts of each and every girl and inserted his finger in her vagina which caused bleeding. She narrated the incident to her father and the complaint was made. PW2 No. 13953077A Havildar (DH) V Mandal who is father of the victim stated that when this incident reported to him he went to make complaint to the Principal and there number of persons



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were called and where her daughter identified the accused/ petitioner.  
PW3 JC-200177X Sub M. Kasinadh formal witness was also examined  
by the prosecution. Further with regard to the incident, PW4 Mr. Manjeet  
Singh was also examined who stated that at the relevant time he was the  
Principal of the College and the incident was reported to him by the father  
of the victim. The victim identified the accused. Other formal witnesses  
namely, MR 03690A Lt Col R Katoch who gave first aid to the victim  
was also examined. There is also the statement of the accused. The  
accused pleaded not guilty and there is also the mention that while  
pleading guilty he also felt shamed.

4. The first and the foremost argument advance from the side  
of the Learned Counsel for the petitioner is that the procedure as  
contemplated under Army Rule 23 for recording of the evidence was not  
complied with. In that regard though reference to the statement of the  
accused said to have been given on 01.11.1996 was pointed out from the  
side of the prosecution stating that the statement of the accused was also  
taken at the time. There is denial from the side of the accused and  
clarified that his signature was obtained on the blank papers. Reference to  
the statement of the witnesses which were recorded in the Summary of  
Evidence was also made. At the bottom of the statement of the witnesses  
there was a casual remark that *the accused declined to cross examine the*

witness. It was obligatory on the part of the court to have obtained the signatures of the accused to show his participation at the time of recording of evidence. In that context it has also been referred that while recording the plea of guilt, the attention of SCM was drawn at the right hand side of the column specifying "signatures to be taken". Such endorsement would itself show that the entire proceedings were fabricated and the court was advised to obtain signatures of the accused/petitioner. In that regard it is stated that the procedure was not complied with so the evidence recorded at the back of the accused cannot be taken into consideration to fix the culpability of the accused/petitioner. 15

5. It is next contended that while recording the plea of guilt, the court ought to have taken care of Army Rule 115 which reads as under:

*General plea of "Guilty" or "Not Guilty" (1) The accused persons plea-'Guilty' or 'Not Guilty' (or he refused to plead, or does not plead intelligible either one or the other, a plea of 'Not Guilty') shall be recorded on each charge.*

*(2) If an accused person pleads "Guilty" that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has*



pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

(2A) Where an accused pleads "Guilty" such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner:-

Before recording the plea of "Guilty" of the accused the court explained to the accused the meaning of the charge (s) to which he had pleaded "Guilty" and ascertained that the accused had understood the nature of the charge (s) to which he had pleaded "Guilty". The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge (s) and the effect of his plea of "Guilty" accepts and records the same. The provisions of rule 115(2) are thus complied with.

(3) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the

*alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto and a record to that effect shall be made upon the proceedings of the court.*

6. It was obligatory on the part of the SCM to make the delinquent understand under rule 115 (2A) that plea of guilt if at all he desired to take could be read against him. There was no certificate from the side of the court. This point further lends support to the contention of the petitioner that proceedings were recorded at his back. In the given circumstances, prosecution has failed to ensure the compliance of Rule 23 and 115 (2A) of Army Act. The entire proceedings stand vitiated.

7. For the reasons assigned above, the petition deserves to be allowed. The impugned order is set aside and petition is allowed. The petitioner shall be deemed in service from the date of his dismissal to the Rank of Sepoy till he attains age of superannuation. He would not be entitled to the back wages. Deemed period of his service <sup>shall be</sup> taken into consideration for the purposes of pension.

**S.S.DHILLON**  
(Member)

**S.S.KULSHRESHTA**  
(Member)

Announced in open court  
today on date 03.12.2009