

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

T.A NO. 279 OF 2009
(WRIT PETITION (C) NO.131 OF 1997)

KESHAR SINGH

...APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

FOR APPELLANT
MR. AVTAR SINGH, ADVOCATE

FOR RESPONDENTS
MR. AJAI BHALLA
WITH
LT. COL. NAVEEN SHARMA

CORAM :

HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S.DHILLON, MEMBER

J U D G M E N T
19.08.2010

1. The petitioner is agitated by the fact that he was in a grossly illegal manner, without following any of the basic legal

norms, dismissed from service and awarded three months rigorous imprisonment on 23.3.1995 by a hastily convened Summary Court Martial (SCM). He approached the Delhi High Court by filing W.P No. 131 of 1997. On formation of this Tribunal, this writ petition has been transferred for disposal. By virtue of Section 15 of the Armed Forces Tribunal Act 2007, this Tribunal has full appellate power against the order of the Court Martial, like a Court of Appeal. Since, in this case, the petitioner challenged the conviction by Court Martial by filing a writ petition, which has been remitted to this Tribunal, the same has been converted into an appeal under Section 15.

2. The charge against the appellant under Army Act Section 69 is as follows:

**COMMITTING A CIVIL OFFENCE, THAT IS TO SAY,
LURKING HOUSE TRESPASS AT NIGHT, CONTRARY TO
SECTION 456 OF THE INDIAN PENAL CODE,**

in that he,

at Jamnagar, in the intervening night of 02 and 03 Mar 95, at about 0150 hours, committed lurking house trespass at night, by entering into house No. NP 31/1 Officers Colony, Infantry Lines, Jamnagar belonging to IC-35794X Major SR Phatak and used as a human dwelling, after the hour of sun set and before the hour of sun rise.

The findings of the SCM are based on no evidence and the entire proceedings were fabricated to implicate the appellant and he was coerced and threatened to make a confession, which is the sole ground on which he has been found guilty and sentenced. He alleged that the authorities have taken recourse to this very arbitrary and illegal dismissal because of their embarrassment over their failure to apprehend the real culprit.

3. Counsel for the appellant stated that the appellant had joined the Army in 1979 and at the time of his Court Martial he had put in over fifteen years of service and was in fact eligible for pension for the rest of his life which has been denied to him by this illegal and very whimsical sentence of dismissal and rigorous imprisonment. The appellant was promoted to the rank of Naik based on his record of service and was serving with 10 Garhwal Rifles at the time of this incident. His unit was located at Jamnagar (Gujarat) and he was detailed to perform the duties of Orderly to Col. R.C Rana, Administrative Commandant, Station HQ, Jamnagar. He used to reside in the servant quarter of Col. Rana and across the road were other residential accommodations for officers, in one of

which Maj. S.P Phatak of 11 Maratha Battalion was residing with his family. Since 11 Maratha Battalion was moving out of Jamnagar to a field area and the officer (Maj. Phatak) had already left the station with the advance party, Col. Rana asked the appellant to assist the family of Maj. Phatak in packing the household goods. The appellant duly complied with this order and on 28.2.1995 and 1.3.1995, the appellant assisted Mrs. Phatak in the packing of the household stores. On 3.3.1995, at 0200 hours, someone is alleged to have entered the house of Maj. Phatak. Mrs. Phatak grappled with the intruder. In fact, she saw the intruder clearly as he had not concealed his identity, but the intruder managed to escape from the house. The same night, the appellant was picked up from the servant quarters in a very mechanical manner and produced before Mrs. Phatak. However, even Mrs. Phatak did not identify the appellant as the said intruder and despite this, he was still falsely implicated in this entire incident. No other identification was carried out and neither did Mrs. Phatak ever identify the appellant as the intruder who entered her house. In fact, Mrs. Phatak knew the appellant well because of the two days during which he had assisted her in packing the household

goods and if the intruder had, in actual fact, been the appellant, she would not have hesitated in identifying him. This alone was conclusive evidence of his innocence but since the authorities could not find the real culprit and were embarrassed by this fact, they, in a most illegal manner, coerced a confession from him and commenced disciplinary proceedings. In fact, the appellant was made a convenient scapegoat for this particular incident.

4. Counsel for the appellant argued that all along his character and performance in the Army had been "exemplary". In fact, he had an excellent record and even in the SCM proceedings, his character rating till the time of this incident has been given as "exemplary".

5. The first and foremost plea of learned counsel for the appellant was that the SCM was convened in great haste and the appellant was forced to plead guilty. This is evident from the fact that the appellant's signatures do not appear anywhere below the plea of guilt or even under the certificate for compliance of Army Rule 115(2). Furthermore, the so called certificate of compliance of Army Rule 115(2) is not endorsed on the original proceeding by the

Commanding Officer, but on a slip of paper attached to the original record. The original record was perused by the Court and it was seen that the signatures of the appellant do not appear either below the plea of guilt or under the certificate of Army Rule 115(2).

6. it was earnestly pleaded by counsel for the appellant that this trauma which was imposed on the appellant resulted in his early demise and the legal heirs had been substituted and whatever legal entitlements were due to the appellant should be paid to his legal heirs.

7. The appeal was responded to by counsel for the respondents by urging that circumstantial evidence about the culpability of the appellant was available and recorded in the summary of evidence. Mrs. Phatak was unable to identify the intruder because she was in a state of panic and had not seen the intruder clearly. However, the appellant was residing very close to her house and was familiar with the layout of the house since he had been moving around the house while helping her in packing the household goods. In any case, the appellant has admitted to his guilt during the recording of the summary of evidence and the plea of

guilt was even preferred by him during the Court Martial proceedings. However, counsel conceded the fact that the plea of guilt had not been signed on the original record by the appellant.

8. We have perused the original records. The record of the proceedings shows that the plea of guilt has not been signed by the appellant nor has it been recorded on the original proceeding. The appellant was not informed about the general effect of the plea of guilt nor about the difference in procedure which is involved in the plea of guilt. Therefore, the finding based on the alleged plea of guilt would have no meaning at all. This view finds force from the decision of the Delhi High Court in **LNK Gurdev Singh v. Union of India** (W.P (C) No. 776 of 1995 dated 1.2.2008), which was followed by this Tribunal in **Ex. Nk. Subhash Chand v. Union of India and others** (T.A No. 723 of 2009 dated 27.4.2010). The observations made by Delhi High Court in **LNK Gurdev Singh's case** (supra) are extracted below:

"Though the petitioner has allegedly admitted the charge by pleading guilty, his signatures nowhere appear on the purported plea of guilt. When an accused person pleads guilty, it would be necessary to obtain his signatures to lend authenticity to such proceedings. This basic requirement was not even adhered to, the absence

whereof lends credence to the allegation of the petitioner that he was not even present at the time of recording of the summary court martial proceedings and he never pleaded guilty.

In our recent judgment pronounced on 17.01.2008 in LPA no.254/2001 entitled *The Chief of Army Staff & Ors. Vs. Ex.14257273 K.Sigmn Trilochan Behera*, we have concluded that such court martial proceedings would be of no consequence and would not stand the judicial scrutiny. In forming this opinion, we had referred to the judgment of the Jammu & Kashmir High court in the case of *Prithpal Singh Vs. Union of India & Ors.*, 1984 (3) SLR 675 (J&K). We had also take note of the instructions issued by the respondents themselves in the year 1984, based on the aforesaid judgment of the Jammu & Kashmir High Court, mandating that signatures of the accused pleading guilty of charge be obtained and if there is an infraction of this procedural requirement, it would violate the mandatory procedural safeguard provided in Rule 115(2) of the Army Rules and would also be violative of Article 14 of the Constitution of India.

Faced with this, an innovative justification was sought to be given by the respondents, namely, the said guidelines were issued by Northern Command whereas the petitioner was tried by the unit in Eastern Command. We feel that the law of the land has uniform application across the country and there cannot be one law for a particular command and different law for another command under the

Army. We may note that even this Court has taken similar view in *Lachhman (Ex Rect) vs. Union of India & Ors.*, 2003 II AD (Delhi) 103 wherein it was held as under:-

“The record of the proceedings shows that the plea of guilty has not been entered into by the accused nor has it been recorded as per Rule 115 in as much neither it has been recorded as finding of court nor was the accused informed about the general effect of plea of guilt nor about the difference in procedure which is involved in plea of guilt nor did he advise the petitioner to withdraw the plea if it appeared from the summary of evidence that the accused ought to plead not guilty nor is the factum of compliance of sub-rule (2) has been recorded by the Commanding Officer in the manner prescribed in sub rule 2(A). Thus the stand of the respondents that the petitioner had entered into the plea of guilt stands on highly feeble foundation.”

Same view was taken by the Allahabad High Court in *Uma Shanker Pathak Vs. Union of India & Ors.*, 1989 (3) SLR 405. The Jammu & Kashmir High Court has reiterated its opinion in a recent judgment in *Sukanta Mitra vs. Union of India & Ors.* 2007 (2) 197 (J&K), wherein the Court held as follows:

“This apart the fact remains that the appellant has been convicted and sentenced on the basis of his plea of guilt.

The plea of guilt recorded by the Court does not bear the signatures of the appellant. The question arising for consideration, therefore, is whether obtaining of signatures was necessary. In a case *Union of India and Ors. Vs. Ex-Havildar Clerk Prithpal Singh and Ors.* KLJ 1991 page 513, a Division Bench of this Court has observed:

“The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to clause (2) of rule 115. Under this mandatory provision the court is required to ascertain, before it records plea of guilt of the accused, as to whether the accused undertakes 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 charge to which he has pleaded guilty. The Court is further required under this provision of law to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the sentence and such signatures shall authenticate of the same. We may take it that the signature of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.”

9. The legal position remains that the plea of guilt is necessarily required to be signed to give authenticity to it. In this case, the signatures of the appellant do not appear below the plea of guilty nor with the compliance certificate of AR 115(2), which itself is pasted onto the original proceedings. It is, therefore, to be presumed that the appellant did not plead guilty and the SCM proceedings should have been conducted on such premise.

10. Keeping in view the above, we direct that the SCM proceedings of 23.3.1995 against the appellant be set aside. The appellant shall be considered to have been discharged instead of dismissed. Accordingly he and his legal heirs shall be entitled to pensionary and other benefits in accordance with rules.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER