

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

TA/403/09  
WRIT PETITION (CIVIL) NO.2259/98

**EX SEP JANAK SINGH (NO.6476852F)  
PERMANENT RESIDENT OF  
VILLATE & PO KATRA AJIT  
VIA HINDAUN CITY  
DIST. KARALI (RAJASTHAN)**

**THROUGH : SH.A.K.BAKSHI, ADVOCATE**

**...APPELLANT**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH SECRETARY  
MINISTRY OF DEFENCE  
DHQ PO  
NEW DELHI-110 011.**
- 2. CHIEF OF ARMY STAFF  
ARMY HEADQUARTERS  
DHQ PO  
NEW DELHI-110 011.**
- 3. COMMANDING OFFICER  
ASC CENTRE (NORTH)  
GAYA (BIHAR)**
- 4. COMMANDING OFFICER  
ADMINISTRATIVE BATTALION  
ASC CENTRE (NORTH)  
GAYA (BIHAR)**
- 5. COMMANDING OFFICER  
898 ASC BATTALION (AT)  
C/O 56 APO**

**THROUGH : DR.ASHWANI BHARDWAJ, ADVOCATE WITH  
LT COL NAVEEN SHARMA**

**...RESPONDENTS**

**CORAM :**

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

**J U D G M E N T  
Dated : 13.05.2010**

1. This Petition has been brought from Delhi High Court on transfer after the enforcement of Armed Forces Tribunal Act, 2007. It has been treated as an appeal. This appeal has been brought for quashing the Summary Court Martial (SCM) proceedings whereby the appellant was held guilty for the offence under Section 39 (b) and 54(b) of Army Act and was sentenced to dismissal from service. It is said that the entire case has been fabricated against the appellant so as to take action against him arbitrarily. The attending circumstances which are well explained by the appellant for his absence, were not taken into consideration and merely on the basis of the statement of the witnesses, conviction was recorded against him. Moreover he was not offered any fair trial and plea of guilt was wrongly assumed on the part of the appellant. It is further submitted that the plea of guilt does not bear his signatures. Endorsement whatever has been made in the Summary Court Martial (SCM) proceedings would

have no legal sanctity as held by Delhi High Court and also by this Tribunal. It is also said that the evidence on record is deficient and there ought to be full trial after affording opportunity to the appellant to cross examine the witnesses.

**2.** In order to appreciate the points involved in this case, a brief resume of the facts may be made. The appellant joined Army Service Corps as Driver Animal Transport (Dvr/AT). The appellant came on 10 days Casual Leave from 5<sup>th</sup> May 1993 to 14<sup>th</sup> May 1993 to attend his ailing wife who was suffering with an incurable disease and unfortunately left for her heavenly abode, leaving behind two toddler children. The appellant had to take care of those minor children and also to make arrangement for their proper care. The appellant had also to perform the last rites of his wife. On 28.07.1988, the appellant reported to ASC Centre (North) Gaya, the nearest military unit to his home town for making the arrangement for a railway warrant so as to reach to his unit. This was not made available to him. To the contrary the ASC Centre (North) detained him there and did not allow him to even move out of the Cantonment. Thereafter, he also moved an application for regularisation of his absence taking into account the compelling reasons, but it was of no avail. The appeal was resisted from the side of Union of India that

charges of overstayal and also of desertion were established against the appellant and he was also a habitual offender, even in the past at three occasions he had overstayed leave. It is also said that punishment so awarded would commensurate with the gravity of charge and his past conduct.

3. The material question raised from the side of the petitioner is that compliance of the statutory rules had not been ensured by the respondents. Even he was not heard and no opportunity was given to him. Further from the original record it is clarified that the plea of guilt did not bear his signatures. We have seen the original records, the Summary Court Martial (SCM) proceedings were drawn on a printed performa. There is also a printed certificate and that certificate does not bear the signatures of the appellant. We find that the printed performa just communicating that necessary compliance of Army Rule 115(2) was done. The strange feature is that there are two certificates on record. One on printed performa signed by the Presiding Officer which does not bear the signatures of the appellant. Another typed certificate has been pasted separately which supposedly bears the signature of the appellant. This itself creates doubt about its authenticity where there is categorical version from the side of appellant that on blank papers his signatures were

obtained. In that regard reliance may be placed on Army Rule 115 (2) which lays down certain precautionary measures to be followed by the SCM, recording 'plea of guilt' so as to ensure voluntariness of the plea of guilt. In order to show that compliance of Army Rule 115 (2) was ensured his signatures ought to have taken as was held in the case of ***L.N.K. Gurdev Singh Vs. Union of India***. The observations made by Delhi High Court may be usefully quoted:

*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.Sigmm 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.”*

As has already been mentioned that compliance of Army Rule 115(2) has not been ensured. The finding of guilt and sentence so awarded are not sustainable and appeal deserves to be allowed.

**4. Appeal is allowed and the Summary Court Martial (SCM) proceedings including sentence are set aside. Appellant shall be deemed to be in service till he earned pensionable service.**

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

**S.S.KULSHRESTHA  
(Member)**

**PRONOUNCED IN THE OPEN COURT  
TODAY ON DATED 13.05.2010**