

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

TA/684/09
WRIT PETITION (C) NO.5325/2000

**EX-HAV/SKT/GS&C RAKESH DHAKA
NO.6927399N I SON OF LATE SH. GHADSI RAM DHAKA
RESIDENT OF VILL. & P.O.
GUDHAN, LANAAUR KALAN TEH & DIST ROHTAK
HARYANA-124 113.**

THROUGH : COL. G.K.SHARMA, ADVOCATE

...APPELLANT

VERSUS

- 1. UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF DEFENCE (D/AG)
SOUTH BLOCK
NEW DELHI-110 011.**
- 2. THE CHIEF OF THE ARMY STAFF
ARMY HEADQUARTERS
SOUTH BLOCK
NEW DELHI-110 011.**
- 3. COLONEL H.C.CHAWLA
COMMANDING OFFICER
23 INFANTRY DIVISIONAL ORDNANCE UNIT
C/O. 99 APO**
- 4. THE OFFICER-IN-CHARGE
ARMY ORDNANCE CORPS RECORDS
POST BOX NO.8 TRIMULGHERRY POST
SECUNDRABAD-500 015**

**5. CAPT ANAND KUMAR
23 INFANTRY DIVISIONAL ORDNANCE UNIT
C/O. 99 APO**

**THROUGH : DR. ASHWANI BHARDWAJ
LT COL NAVEEN SHARMA**

...RESPONDENTS

CORAM :

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

JUDGMENT

Dated : 02.07.2010

1. This Writ Petition under Article 226 of the Constitution of India has been brought for quashing the Summary Court Martial (SCM) proceedings whereby the petitioner was held guilty for the charge under Section 47 of the Army Act and sentenced to dismissal from service. Having received petition from Delhi High Court, it is treated to be an appeal under Section 15 of the Armed Forces Tribunal Act. It is said that SCM had proceeded to fix the culpability of the accused on conjectures and surmises. The accused-appellant did not plead guilty before the Court but they proceeded assuming the 'plea of guilt' on account of his refusal to sign the 'so called plea of guilt'. It is said that in that situation, the court ought to have adopted full fledged trial of the accused. No attempt

was made to examine the witnesses to substantiate the charges. Unsigned 'plea of guilt' has no legal sanctity.

2. This petition was resisted from the side of Union of India contending that the accused-appellant misbehaved with his Senior Officer and also ill-treated his subordinates. There was ample evidence on record to prove the case against the accused-appellant. As regards the 'plea of guilt' is concerned, it is said that accused-appellant pleaded guilty but refused to sign the same. As regards the other charge, full opportunity was given to the accused-appellant to cross examine the witnesses and in that charge his culpability could not be fixed.

3. In order to facilitate the disposal of this appeal, brief facts of the case may be mentioned. Petitioner was charged for the offences under Sections 47 and 63 of the Army Act which read as under:

<u>CHARGE NO.1</u>	<u>ILL-TREATING A PERSON</u>
AA Sec 47	<u>SUBJECT TO THE ARMY ACT</u>
	<u>BEING HIS SUBORDINATE IN RANK</u>

In that he,
at 23 Inf DOU. C/O 99 APO on 04 Apr
99 about 0025 hrs. Ill-treated No.
6912057N Hav SHGD BS Negi of the
same unit by deliberate plan and
intentionally assaulted him with wooden
baton and broken bricks causing him
grievous and multiple injury at T
junction near ASC Sup Depot.
Namkom.

CHARGE NO.2 VIOLATION OF GOOD ORDER
AA Sec 63 AND MIL DISCIPLINE

In that he,
at 23 Inf DOU, C/O 99 APO on 04 Apr
99 about 0010 hrs after completion of
Barakhana threatened No. 6912057N
Hav SHGD BS Negi his subordinate in
the same unit, at unit main gate by
saying “TUM KYA KAR LOGEY,
GATE SE BAHAR AAO, MAIN
TUMIHE DEKH LOONGA” OR
WORDS TO THAT EFFECT.

4. Record of SCM proceedings reveals that with regard to Charge No.1 accused pleaded guilty. But from the leaf affixed on the SCM proceedings, it is evident that it has not been signed by the accused. It simply conveys that measures for explaining the outcome of ‘plea of guilt’ in pursuance to Army Rule 115(2) were taken by them but the fact remains that accused-appellant did not sign that overleaf affixed with that performa and endorsement was given that the accused-appellant refused to sign the ‘plea of guilt’. As regard to other charge he specifically pleaded not guilty and for which he was tried.

5. It is submitted on behalf of the accused-appellant that the petitioner was enrolled in the Army Ordnance Corps (AOC) on 17.03.1987 as Store Keeper Technical General Store and Clothing (SKT/GS&C). Petitioner is said to have served with sincerity and devotion. It is said that on 13.01.1998 he was posted to 23 Infantry

Divisional Ordnance Unit (23 Inf DOU) where Col H.C.Chawla (Respondent no.3) was the Commanding Officer and Capt Anand Kumar (Respondent no.5) was the Officer-in-Charge. Certain deficiencies were noticed by Capt Anand Kumar which recoiled on the working of Commanding Officer (respondent no.3). Respondent no.3 was annoyed with respondent no.5. He was also bent upon to harass the petitioner considering him to be in connivance with respondent no.5. He however explained to him that since he was working under respondent no.5 so whatever the orders were given, he had to comply his directions. Certain materials were given by respondent no.5 to the petitioner for getting them typed which came to the notice of respondent no.3. He felt annoyed and cooked up a story against the petitioner. It is also said that there was no fair trial of the petitioner and he was not afforded any opportunity.

6. As regards charge No.1, it may be mentioned that the court proceeded with the assumption that the accused pleaded 'guilty'. However there is also an endorsement in the record of SCM proceedings to the effect that accused-appellant refused to sign 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 are extracted herein under:

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.”

7. The legal position remains that the plea of guilt is necessarily required to be signed to give authenticity to it. The fact

remains that the court did not adhere to the rules for the purpose to take signature of the accused. Such unsigned 'plea of guilty' has no significance. Under such circumstances the trial and conviction of the accused-appellant for Charge No.1 are not legally sustainable. Endorsement of 'plea of guilt' alone is not sufficient unless there is signature of the accused for the purpose of attaching authenticity.

8. It may be mentioned that prosecution did not examine even a single witness in the case. The burden of proof rest on the prosecution. Merely acting on the 'so called plea of guilt' the burden is not discharged. The prosecution must stand on its own legs for basing its findings. It shall be useful to quote the observations made by Apex Court in the case of ***R.Venkatakrishnan Vs. C.B.I., AIR 2010*** page 1812 para 149 which reads as under:

The burden of proof is always heavy on the prosecution. The prosecution must stand on its own legs basing its findings on the evidence that has been let in by it. The prosecution has however failed in this task.

9. With regard to the Charge No.2, the SCM found the accused-appellant 'not guilty', therefore, the punishment awarded to the

accused-appellant is on account of his being guilty of the First Charge, which is not sustainable.

10. Appeal is allowed and the conviction and the sentence of the accused-appellant are set aside. Appeal is allowed. The accused-appellant shall be deemed to have been in service till he reaches the minimum pensionable service. He shall not be entitled for back wages/salary for the interregnum period i.e. from the date of his dismissal till to the period he attained minimum pensionable benefits.

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

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

**PRONOUNCED IN THE OPEN COURT
TODAY ON DATED 02.07.2010**