

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

**T.A NO. 696 OF 2009**  
**(WRIT PETITION (C) NO.4794 OF 2001)**

**RAM KISHORE SHARMA**

**...APPELLANT**

**VERSUS**

**CHIEF OF ARMY STAFF AND OTHERS**

**...RESPONDENTS**

**FOR APPELLANT**  
**MR. A. BHATTACHARJEE, ADVOCATE**

**FOR RESPONDENTS**  
**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, being aggrieved by the fact that he was in a most arbitrary manner punished by a Summary Court Martial held on

30.9.1999, as a consequence of which he was reduced to the ranks and dismissed from service, filed W.P No. 4794 of 2001 before the Delhi High Court. 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 appellant was enrolled in 1986 and in January 1996 was posted with 302 Field Ambulance Company in a high altitude field area. At this time, the appellant's wife and three children were also staying with him and his wife was in an advanced stage of pregnancy. Despite this mental tension, which should have been appreciated by his superior officers, he was constantly being detailed on outstation duties leaving his helpless wife and children at home. Having full knowledge of the condition of the appellant's family, he was ordered by his Commanding Officer (CO) on 22.1.1998 to proceed on temporary duty to

forward Advanced Dressing Station (ADS), where he was not able to keep his family with him. When he represented against this fact, he was told that he could proceed on leave and take his family with him and leave them at his home town and thereafter rejoin duty and proceed to the forward area. Accordingly, he was granted two months annual leave and was evicted from the family accommodation which he had been allotted. Due to this constant pressure and ill-treatment, the appellant supposedly lost his mental balance and power of reasoning and on reaching his home town, his parents and other family members got him admitted to the District Hospital for suitable and appropriate medical treatment. He was diagnosed as a case of "anxiety neurosis". Notwithstanding the harassment at the hands of his superior officers, immediately on recovering from his mental illness, he reported at the Army Medical Corps Centre and School, Lucknow on 7.8.1999. After reporting to the Centre, formal cognizance was taken of his over-stayal of leave and a summary of evidence was recorded and he was court martialled and sentenced to be reduced to the ranks and to be dismissed from service. The charges that were framed against him are as given below:

**FIRST CHARGE**

**Army Act Sec. 39(b)**

**WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE  
GRANTED TO HIM,**

in that he,

at field, on 15<sup>th</sup> April 98, having been granted leave to absence from 08 Feb. 98 to 14<sup>th</sup> Apr. 98 (66 days Annual Leave) failed without sufficient cause to rejoin duty and remained so absence till surrendered voluntarily at Adm. Bn. AMC Centre and School, Lucknow on 05 Jan 99 at 10 h.

**SECOND CHARGE**

**Army Act Sec. 39(a)**

**ABSENTING HIMSELF WITHOUT LEAVE**

in that he,

at Lucknow, on 15 July 99 at 1640 h. While was attached with Adm. Bn. (Depot Coy) AMC Centre & School, Lucknow as a field deserter, absented himself without leave and remained so absent till reported voluntarily at Adm. Bn., AMC Centre & School, Lucknow on 07 Aug 99 at 1350 h.

**THIRD CHARGE**

**Army Act Sec. 54(b)**

**LOSING BY NEGLECT PAY BOOK (AB-64) THE PROPERTY OF  
THE GOVT ISSUED TO HIM FOR HIS USE**

in that he,

At field, on 08 Feb. 98 negligently lost pay Book (AB-64) the property of the Govt issued to him for his use.

3. The first and foremost argument preferred by the appellant was that he has not signed his plea of guilt to any of the three charges that were preferred against him. It was only subsequently, after the conclusion of the SCM, that his signatures were obtained on a sheet of paper and possibly taken to be a certificate of compliance of Army Rule 115(2). All along during the SCM, he has never pleaded guilty and this plea of guilt has been arbitrarily filled in by his CO. Therefore, the SCM itself is null and void and illegal.

4. This contention was refuted by the learned counsel for the respondents by stating that at the time of the incident, as already accepted by the appellant, he was serving in a forward field area, where a miniscule percentage of soldiers are permitted to keep their families. In fact, 99% of the soldiers in that area live without their families. Therefore, he was one of the few privileged soldiers who was permitted to keep his family with him. This was not a bias on the part of the CO but an unusual privilege extended to him by his CO. However, notwithstanding the fact

that he had his family with him, he had to be detailed on forward duties in rotation so that his colleagues do not have to bear undue brunt of such difficult forward area duties. He was explained this fact which he understood and was sanctioned two months leave to take his family back to his home town and thereafter rejoin. While he was granted leave from 8.2.1998 to 14.4.1998, he failed to rejoin duty and was absent till 5.1.1999 thereby absenting himself by approximately eight months. Such conduct is contrary to the ethos and culture of a disciplined force like Army and is not acceptable. Additionally, while he was with the Army Medical Corps Centre and School at Lucknow, while his case was under investigation, he again absented himself from 15 July to 7 August 1999 without any authorisation. The third charge of losing his pay book on 8.2.1998 is adequately documented and proved. All in all, the appellant behaved in a manner unbecoming of a disciplined soldier of the Armed Forces and he was tried by a legally constituted Court Martial and given the sentence as stated by him.

5. Learned counsel for the respondents went on to state that an exhaustive and proper summary of evidence had been recorded wherein the appellant has admitted that he was absent from leave. He has



taken the plea that he fell prey to "evil spirits", which is no reason to anybody to overstay leave. However, it was admitted that because of constraints of formatting the mandatory caution under Army Rule 115(2) has not been endorsed on the original record and has been attached as a sheet to the original proceedings thereby lending credence to the assertion of the appellant that he did not plead guilty. This was the only aberration in the entire SCM proceedings and the record of the summary of evidence is watertight about his culpability.

6. 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.”**

7. The legal position remains that the plea of guilt is necessarily required to be signed by the appellant to give authenticity to it. In this case, the signatures of the appellant do not appear on the plea of guilt on the original record. The signatures of the appellant and the CO on the mandatory cautionary certificate under Army Rule 115(2), which is pasted onto the original record, do not inspire any confidence in its authenticity. It is, therefore, to be presumed that the appellant did not plead guilty and the SCM proceedings should have been conducted on such premise.

8. Keeping in view the above, we direct that the SCM proceedings of 30.9.1999 against the appellant be set aside. The appellant shall be considered to have been discharged instead of dismissed and will accordingly be entitled to pensionary and other benefits in accordance with rules.

**(S.S DHILLON)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**