

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 01 of 2011
Writ Petition (Civil) No. 5054 of 1993
With M.A. No. 27 of 2012

Ex Nk Rohtas

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Hooda, Advocate.
For respondents: Dr. S.P. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

J U D G M E N T
30.05.2012

S.S.Dhillon, Member:

1. This petition has been filed by the Petitioner seeking quashing of the Summary Court Martial (SCM) proceedings of 27th June 1992 as well as the rejection orders dated 27th June 1992 and 2nd January 1993 and 17th September 1993 whereby his mercy petitions under Section 164 of the Army Act were dismissed.

2. The Petitioner was enrolled in the Army as a Sepoy on 26th December 1974. After serving in the Army for 17½ years he was chargesheeted on 22nd June 1992 and was Court Martialled on 27th June 1992 for an offence under Sections 36D and 40 (a) of the Army Act. The charge sheet is as reproduced below:

“CHARGE SHEET

The accused NO. 7768790M (subs) Nk/MP Rohtas of 101
Area Provost unit is charged with:-

<p><u>First Charge</u> <u>Army Act</u> Sec40(a)</p>	<p>Using criminal force to his superior officer</p> <p>In that he, at field, on 18th June 1992 at 2040 hours when JC-153477L Sub (MP) Om Prakash Senior JCO of his unit ordered No. 7768158 F Hav (MP) S.N. Mehto to place him under close arrest started showering filthy abuses on the S/JCO and other JCOs, forcefully kicked him in his lower abdomen when JC-193328A Sub (Clk) Hawa Singh of the same unit tried to extract JC-153477L Sub (MP) Om Prakash from the site of incident, the accused kicked JC-193328A Sub (Clk) Hawa Singh in his abdomen.</p>
<p><u>Second Charge</u> <u>Army Act</u> Section 36(d)</p>	<p>Leaving his post without orders from his superior officer</p> <p>In that he, at field when detailed as Guard Commander for CSD Canteen wef 1800 hours on the same date to 0600 hours on 19th June 1992, quitted his post between 2025 hours and 2040 hours on 18th June 1992 without orders from his superior officer and was found creating nuisance in the unit lines.</p>

The Petitioner put across his arguments that the charge sheet showed him to be serving in Field whereas he was serving in Shillong which is the capital of Meghalaya and not a field station. Learned counsel for the Petitioner also argued that there was non-compliance of Army Rule 22 wherein the initial hearing of the charge had not taken place and also non-compliance of Army Rule 23 in that Summary of Evidence had not been recorded in accordance with the Rules. Petitioner also stated that he had been wrongly advised by the Respondents to submit his mercy petition under Section 164 of the Army Act to the Army Commander instead of to the Chief of Army Staff and,

therefore, he had been delayed in representing to the Chief of Army Staff. Learned counsel for the Petitioner also urged that the punishment meted out to the Petitioner i.e. reduced to ranks and dismissal was unduly harsh and disproportionate, keeping in view the offence that the Petitioner had committed.

3. The main argument put across by the learned counsel for the Petitioner was that the plea of guilt in the SCM proceedings had not been signed by the Petitioner. In fact the signatures of the Petitioner do not appear anywhere in the proceedings. This substantiates the argument of the Petitioner that in fact no Court Martial had been held and he had merely been asked to sign a few papers and was informed that he had been sent home. Learned counsel made a vehement plea that no Court Martial had been held in the manner as documented and that the Petitioner had not pleaded guilty to the charges against him and since his signatures do not appear on the plea of guilt or on the certificate of their compliance under Army Rule 115(2), the SCM proceedings deserve to be set aside and the Petitioner should be reinstated in service with all consequential benefits.

4. Learned counsel also argued that keeping in view the statement of the accused at the SCM it was inconceivable that the Petitioner could have pleaded guilty to the charges against him. In his statement the Petitioner has categorically stated that he had consumed some alcohol and thereafter he did not remember what he had done and, if at all he had hit his superior, his actions were not known to him let alone the consequences of his actions. In these circumstances, it was for the Commanding Officer to apply his mind and

even if the Petitioner had pleaded guilty in the trial the plea should have been changed to not guilty. The statement of the Petitioner recorded in the Summary of Evidence is reproduced as under:

“The accused No. 7768790 (MP) Nk Rohtas having been duly cautioned states:

(a) on 18th June 1992 I was Guard Cdr of CSD Canteen Guard. I took bedding at about 1800 hours and went to the place of duty. No.7770079 Y L/Nk (MP) Ompal Singh was the first night Guard Santry. L/Nk Ompal Singh asked me that let us drink the liquor. I gave Rs.44 and L/Nk (MP) Ompal Singh added Rs.45/- and he brought a rum bottle from outside.. I do not know who brought it and from where. After getting the rum bottle we both consumed. At about 1950 hours I came down, in order to have my meal (khana) when I was coming down L/Nk (MP) Ompal Singh shouted from the back to stop. He asked me let us go to JCOs and asked them, why they have not given liquor today. Because the liquor outside is very costly than the actual cost.

(b) After this I fell down and thereafter I do not remember anything.

(c) The above statement has been read over in the language understands and he signed it as correct.”

5. Respondents have filed a reply and have taken a stand that there was no legal infirmity in the trial and that there was full compliance of Army Rules 22 and 23. The Unit in which the Petitioner was serving though located in Shillong was in fact a field station in accordance with the notification of the

Government of India and, therefore, no illegality had been committed either with regard to non-compliance of Army Rules 22 and 23 or the framing of charge.

6. Learned counsel for the Respondents argued that the Petitioner had a very chequered history in that he had been punished four times earlier in his brief span of 17 years, the details of which are as under:

Sl.No.	Date of Offence	Offence	Punishment awarded
(a)	22 nd March 1986	<u>AA Sect 55(a)</u> In that he at 2230 hours on 22 nd March 1986 wilfully destroyed window glasses of Desk room the property of Govt.	Reprimand
(b)	20 th November 1987	<u>AA Sect 65</u> An act prejudicial to good order and military discipline In that he on 20 th November 1987 at 2230 hours created nuisance in the unit line after consuming liquor and quarrelling with other NCOs Hav. Devi Singh and Hav. Abhey Singh.	Severe Reprimand
(c)	11 th June 1999	<u>AA Sect 39 (a)</u> Absenting himself without leave	04 days pay fine

		<p>In that he at C/O 56 APO when detailed as an escort incharge for collection of vehs and when desp by train alongwith the veh from CVD Delhi Cantt to Abohar with a escort went to his home without any proper authority and absented himself without leave and rejoined the Unit HQ voluntarily on 23.6.89 (FN). Period of absence 11.6.89 to 22.6.89-12 days.</p>	
(d)	31 st July 1991	<p><u>AA Sect 63</u></p> <p>An act prejudicial to good order and military discipline</p> <p>In that he on 31st July 1991 at 2130 h ours created nuisance in the Unit Recreation room after consuming liquor and quarrelling with other NCOs/Hav/Clk SD Prasad & Hav/W/H Hari Nand.</p>	Severe Reprimand

7. However, learned counsel for the Respondents accepted the fact that the plea of guilt had not been signed by the Petitioner on the SCM proceedings and neither had the Petitioner appended his signatures to the certificate under Army Rule 115(2).

8. We have heard learned counsel for the parties and perused the original record. The record of the SCM proceedings shows that the plea of guilt has not been signed by the Petitioner on the original proceedings. Therefore the findings 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. v. Ex. 14257273 K. Sigmn Trilochan Behera, we have concluded that such court martial proceedings would be of no consequence and would not stand in 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 v. Union of India & Ors., 1984(3) SLR 675 (J&K). We had also taken 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) v. 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 v. Union of India & Ors.*, 1989 (3) SLR 405. The Jammu & Kashmir High Court has reiterated its opinion in a recent judgment in *Sukanta Mitra v. 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 & Ors. v. 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 signatures of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.”

9. Various judicial forums have time and again upheld the view that the plea of guilt is necessarily required to be signed by the Petitioner to give authenticity to it. In the absence of such signatures, the proceedings do not inspire any confidence and it is, therefore, to be presumed that the Petitioner did not plead guilt during the SCM proceedings.

10. We, therefore, direct that the SCM proceedings of 27th June 1992 be set aside. The Petitioner shall be deemed to have been discharged instead of dismissed and shall be entitled to pensionary and other retiral benefits in accordance with the Rules.

11. With these observations, the appeal is disposed of. No costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 30, 2012
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