

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

**T.A. 204 OF 2010  
Writ Petition (Civil) No. 12289 of 2005**

**IN THE MATTER OF:**

**EX NK MAST RAM**

**.....Applicant**

Through : Mr. C. P. Singh, counsel for the applicant

Versus

**The Union of India and others**

**.....Respondents**

Through : Ms. Barkha Babbar, Advocate for the respondents

**CORAM:**

**HON'BLE MR JUSTICE S. S. KULSHRESTHA, MEMBER,**

**HON'BLE LT GEN Z.U.SHAH, MEMBER**

**JUDGMENT**

**Date: 23.05.2011**

1. The appellant had filed WPC 12289/2005 in the Hon'ble Delhi High Court. The same was transferred to this tribunal on 5 Nov 09. In the appeal, the appellant has prayed that the proceedings of his SCM assembled on 25 Nov 02 and Govt. of India letter dt 3 Jan 04 rejecting his statutory petition be quashed. The appellant has also prayed that he be reinstated into service with all consequential services.

2. The appellant was enrolled in the Army in June 1996 and posted to 307 Medium Regt as Driver Special Vehicle. He was promoted to the rank of Nayak in 2001.

3. The appellant states that in Dec 2002 while he was getting his vehicle repaired in 72 Armoured Workshop and he made a complaint about improper repairs for which he was falsely implicated in a case of sale of 40 Ltrs of Diesel to a civilian on 16-17 Oct 02. The appellant contends that Court of Inquiry was held but he was never questioned nor was he given the copy of the C of I till he submitted his statutory representation against the sentence of SCM .

4. The appellant states that on 2 Nov 02 SCM was purported to have been held by CO 307 Medium Regt. The SCM proceedings are false and fabricated and the appellant was charged under Army Act Section 52 (a) as follows :

**Army Act  
Sec 52 (a)**

**COMMITTING THEFT OF  
PROPERTY BELONGING TO  
THE GOVERNMENT**

**In that he,**

**At fd, on 16 Oct 2002, committed theft of approximately 40 litres of DHPP (N) diesel, t he property of the government, from veh BA No 00 D-126821Y (Stallion) of 40 Med Regt and Veh BA No 84D-97078 N (Shaktiman) of 33 Arty Bde.**

5. The appellant was sentenced to reduction to ranks and dismissed from service.
6. The appellant states that on the day of purported SCM he was ill-disposed and he was sick in quarters but summoned to the unit lines and sentenced to dismissed and reduced to ranks. The appellant also submits that he was coerced into signing various papers.
7. The appellant states that on the day of SCM he was attached to 72 Armoured Workshop and since the alleged theft of diesel took place in 72 Armoured Workshop he should have been tried by CO 72 Armoured Workshop and not by CO 307 Medium Regt. The appellant further states that the friend of the accused detailed to help him but Maj H Ratna never saw or advised him. He was also not permitted to hire a civil counsel. He was not given a charge sheet and during the

purported SCM no witnesses were summoned. The sentence awarded to him also was disproportionate to the alleged offence.

8. The appellant states that on 7 Feb 2003 he submitted a statutory appeal against the sentence of SCM (Annex P4). The same was rejected by the Govt on 1 June 04 (Annex P5).

9. The respondents in the counter affidavit have stated that the appellant had a poor disciplinary record. His hand was suspected in two earlier theft cases which could not be proved for want of evidence. The appellant also had two punishments on his record i.e. 14 days pay fine under Army Act Section 42 and absenting himself without leave under Army Act Section 39 (a).

10. The respondents state that on 16 Oct 02 the appellant while getting his vehicle repaired at 72 Armoured Workshop was caught misappropriating 40 Ltr of diesel. A summary of evidence was conducted on 26 Oct 02 and SCM convened on 26v Nov 02 wherein the appellant pleaded guilty and procedure under Army Rule 115 (2) was followed. The appellant declined to call any witnesses. The case was based on circumstantial evidence substantiated by the statement given by Sh. Govind Gokul during summary of evidence (Annex R3). The appellant was also identified in a test identification parade carried out as per the Regulations of the Army para 106. The appellant was



sentenced to reduction, to the ranks and dismissed from service, a sentence which was commensurate to the gravity of the offence.

11. The appellant submitted an appeal against the sentence of SCM on 7 Feb 03. The same was rejected by the Central Govt by speaking order dt 1 June 04 (Annex P5).

12. The respondents maintain that the appellant had only been temporarily attached to 72 Armoured Workshop for repair of his vehicle. His CO however remained CO 307 medium Regt.

13. The SCM was assembled on 25 Nov 02 and the trial conducted in a fair manner by his CO Col Kulwinder Singh.

14. The respondents maintain that the appellant never asked for a civil advocate and had accepted the friend of the accused detailed to help him. Prior to the SCM the appellant was medically examined at 159 GH on 25 Nov 02 and was declared medically fit to undergo the court martial.

15. We have perused the original records. The record of the proceedings show that the plea of guilt has been signed by the appellant on an overleaf annexed to the proceedings and it has not been recorded on the original proceeding. It, therefore, appears that 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 01.02.2008), which was followed by this Tribunal in **Ex. Nk. Subhash Chand v. Union of India and others**(T.A. No. 723 of 2009 dated 27.04.2010). 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 leads 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.

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 the 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."

10. 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 adequate confidence on its authenticity. This is all the more relevant in this particular case as the appellant has not even signed the proceedings under Army Rule 22 nor has he been permitted to make an appropriate submission/statement at



the recording of Summary of Evidence. It would only have been appropriate that the SCM be conducted as if the appellant had pleaded "*Not Guilty*". It is, therefore, to be presumed that the appellant did not plead guilty and the SCM proceedings should have been conducted on such premise.

11. We therefore, direct that the impugned Summary Court Martial be set aside. The appellant will be deemed to be in service till he attains minimum pensionable service, after which he will be entitled to pension and other benefits in accordance with Rules. No order on back wages. Petition is disposed of accordingly.

**Z. U. SHAH  
(MEMBER)**

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