

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT No. 1 (List A)**T.A. No. 1019 of 2010****Wednesday, this the 11th day of January, 2017****“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

No. 13991225-K Ex Sep/AA Sanjiv Kumar Prajapati Ex AMC
Centre and School, Lucknow Son of R.S. Ram Vill and P.O.
Dildarnagar, Tehsil : Jamania, Dist: Ghazipur Petitioner

Versus

1. Chief of the Army Staff
New Delhi.
2. Commandant
Army Medical Corps Centre and School Lucknow.
3. General Officer Commanding
UP Area Bareilly,
4. Union of India,
Through Secretary, Ministry of Defence DHQ PO, New
Delhi Respondents

**Ld. Counsel appeared for the - Col (Retd) Aashok Kumar
Petitioner & Shri Rohit Kumar, Advocate**

**Ld. Counsel appeared for the - Shri G.S. Sikarwar, Advocate
Respondents
Assisted by OIC Legal Cell - Maj Soma John**

Order**(Per Se Hon'ble Air Marshal Anil Chopra, Member (A))**

1. Being aggrieved by order dated 23.02.2001 passed under section 46 (a) of the Army Act 1950, the petitioner preferred Writ Petition No. 29272 of 2002 in the High Court of Judicature at Allahabad under Article 226 of Constitution of India, which on establishment of the Tribunal has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No. 1019 of 2010.

2. The facts in nut-shell are that the petitioner was enrolled in the Army on 19.04.1995 and was assigned to Army Medical Corps. He was charged for offence under section 46 (a) of the Army Act, 1950 and consequently, tried by Summary Court Martial and punished with dismissal from service vide order dated 23.02.2001 coupled with R.I. for Eight months in civil prison. Aggrieved by the order, the petitioner preferred a Mercy Appeal dated 07.03.2001 addressed to Chief of Army Staff. However, the said appeal after due deliberation culminated in being rejected vide order dated 23.01.2002. It is in the above backdrop that the above

petition was filed by the petitioner in the High Court at Allahabad.

3. We have heard Ld. Counsel for the petitioner Shri Rohit Kumar and Shri D.K.Pandey, Ld. Counsel for the respondents assisted by OIC, Legal Cell and perused the record.

4. It would appear from the materials on record that in the night of 30.01.2001, the petitioner had attempted to commit sodomy on a recruit while serving with No 2 Military Training Battalion, Army Medical Corps Centre and School Lucknow at 2330 hours. On 01.02.2001, the petitioner appeared before the Commanding officer for hearing of charges in terms of Army Rule 22. In the instant case, the petitioner took the alibi of being intoxicated and was not in his full senses. On 03.02.2001, the Commanding officer perused the Summary of Evidence and signed the charge sheet after being satisfied with the existence of the prima facie case. On 19.02.2001, the petitioner was called upon to produce the witnesses in his defence if any. The Petitioner it would appear was afforded opportunity to cross examine the witnesses produced by the prosecution but he declined. During trial by summary Court Martial, the petitioner pleaded guilty to the charge

submitting that it all happened on account of heavy consumption of alcohol which rendered him insensate to whatever happened on the date of occurrence.

5. The quintessence of submissions advanced by Learned counsel for the Petitioner is that trial was brought to completion within a span of one hour and 35 minutes which militates against the Rule 115 (2) of the Army Rules attended with the submission that since the signatures of the petitioner were not obtained on the original record wherein he pleaded guilty, the plea of guilt was not sustainable in law. The next submission is that the friend of accused deployed to defend the petitioner was an inexperienced officer and hence, he was prejudiced in his defence. The learned counsel also took the stand that the entire proceedings resulting in his dismissal were a nullity regard being had to the fact that copies of SCM proceedings were not supplied to him. The last submission advanced across the bar is that there was no compliance with Army Rule 126 which envisages that the court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

6. **Per contra**, repudiating the aforesaid submissions, the learned counsel for the respondents submits that it

being a case in which the petitioner had pleaded guilty, there was nothing to prolong the trial and hence it concluded within a span of one hour and 35 minutes. He further submits that there is no deficiency inasmuch as certificate on separate sheet was attached.

7. It would appear that the allegation against the petitioner was that in the night of 30.01.2001, he attempted to commit sodomy on a recruit in an intoxicated state. In the course of hearing, entire original record was produced for perusal of the Bench. From a bare reading, it would appear that the petitioner was arraigned before the Commanding officer for hearing of charges in terms of Army Rule 22 who ordered production of evidence in writing in terms of Army Rule 23 in the presence of an independent witness. The petitioner was given full liberty to cross examine any witnesses including the aggrieved but the petitioner declined to cross examine any of the witnesses. It would further appear that during Summary Court Martial a question was put to him as to whether he was guilty or not guilty of the charge. He answered the question pleading guilty. Rule 115 relates to general plea of guilty or not guilty. The sub rule 2 being relevant is reproduced below.

"If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands 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 the charge to which he has pleaded guilty and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence, (If any) or otherwise that the accused ought o plead not guilty."

8. Coming to the facts of the present case, it would transpire that before recording the plea of guilty, the court, it is mentioned in the original record, explained to the petitioner the meaning of the charge to which, it is further mentioned, he had pleaded guilty. It is also mentioned that it was ascertained that he understood the nature of the charge to which he had pleaded guilty. It is also mentioned that the petitioner was also informed the general effect of the said plea and the difference in procedure, which would be followed consequent to the said plea. The court having satisfied itself that the petitioner understood the charge and the effect of his plea of guilty accepted and signed the same. The petitioner was further asked whether he wished to make any statement in reference to the charge or in mitigation of punishment. He stated 'yes'

and further stated that he had committed a mistake in drunken state and he requested that he be saved. A further question was asked as to whether he wished to call any witness as to character. He stated 'no'. In ultimate analysis, the Summary Court Martial gave its verdict after taking all the matters into consideration and ordered him to suffer RI for nine months in civil Jail besides visiting him with the punishment of dismissal from service.

9. The next submission of the learned counsel is that the entire summary court martial proceedings were concluded within a span one hour and 35 minutes. We have given our thoughtful consideration to the said contention of the petitioner regarding the proceedings having been concluded and a finding of guilty being recorded and thereafter the sentence imposed in one hour and 35 minutes. The matter, in our view could have been adjudicated upon and concluded within that period and we are unable to hold the proceedings to be invalid on this count. The petitioner had pleaded guilty and the proceedings recorded. This could well be concluded within the said time. We have gone through the court marital proceeding during the course of hearing. A perusal of the same shows that it is on a printed form. The questions to be asked are printed and

the answered are handwritten or typed. Besides, wherever required, the printed portions have been scored off and/or tick-marked. This process could indeed have been completed in the time as has been recorded. Besides, there is a presumption in law that judicial and official acts have been regularly performed.

10. As regards the other submission that the officer provided as friend was an inexperienced officer. From the record it would transpire that the officer provided to the petitioner as friend was of the rank of lieutenant with sufficient experience. The submission on this count is incomprehensible and cannot be countenanced.

11. The next submission is that the signatures of the petitioner did not appear on the original record of the plea of guilty and it appears only on the overleaf (a separate sheet) and that the over-leaf (separate sheet) does not contain counter signatures of the Presiding officer which militates against Army Rule 115 (2). It is conceded by the learned counsel for the respondents that the signatures of the petitioner do not appear on the original record of the plea of guilty on page B of the SCM proceedings and only appear on the overleaf (separate sheet appended to the original record). The learned counsel submits that it does indicate that the

petitioner was not informed about the general effect of the plea of guilty on or about the difference in procedure which is involved in the plea of guilt and by this reckoning the finding based on the alleged plea of guilt would be redundant. In this connection, the learned counsel in order to prop up his submissions, placed credence of various decisions including the decision of **Satpal Singh vs Union of India and others rendered in T.A No 536 of 2009 by the Principal Bench New Delhi on 01.12.2010**. The quintessence of what has been held by the Principal Bench is quoted below.

"8. Considering the fact that the signatures of the appellant were not appended on the plea of "guilt", notwithstanding which the Court changed the plea of "guilty" to "not guilty", but continued with the trial as if he had pleaded guilty is gross violation of the provisions of Army Act. Such illegality has vitiated the trial. We, therefore, have no hesitation in setting aside the SCM proceedings of 10.1.1996. The appellant shall be deemed to be in service without backwages. However, this interregnum period shall be counted towards the effective service rendered for all purposes."

12. In the aforesaid decision, the Principal Bench in arriving at the conclusion, relied upon 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) has been extracted by the Principal Bench in its decision cited above which are reproduced 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."

13. The Principal Bench also cited the same view taken by the Allahabad High Court in **Uma Shanker Pathak Vs. Union of India & Ors. 1989 (3) SLR 405**. It also cited the decision of the Jammu & Kashmir High Court in which the 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."

14. Another case cited by the Principal Bench is in the case of **Union of India and Ors. Vs. Ex-Havildar Clerk Prithpal Singh and Ors. KLJ 1991 page 513**, in which the 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.

15. Yet another decision of Delhi High Court being relevant on the point is Chief of Army Staff and others vs Trilochan Behera rendered in LPA No 254 of 2001 on 17.01.2008 in which attention to guide to Summary Court Martial issued in the year 1984 was drawn in which at Heading (b) Arraignment at pages 7 and 8 it is mentioned.

*"If the accused pleads guilty to the charge, the implications of the plea should be explained to the accused (s) by the officer holding the trial vide AR 115(2). He should also make the following record on page 'B' of the proceedings in the presence of the accused and **obtain his signatures thereon.**"*

16. In Para (iv) of the guide to Summary Court Martial, it is enumerated that failure to comply with the procedure explained in sub Para 16 (b) (iii) above will amount to violation of the procedural safeguard provided in Army Rule 115 (2) and violation of Article 14 of the Constitution of India and the punishment awarded will have to be set aside. (Auth: HQ Western Command Letter No 0337/1/A3 dated 30 Oct 84 attached as Appx F and Judgment of J & K High Court, see Pritpal Singh vs Union of India (J & K) 1984 (3) SLR 680)."

17. It would thus transpire that in the light of the decisions of the Court, the Army Headquarters issued

the aforesaid letter for all the officers holding Summary Court Martial to comply strictly with by obtaining signatures of the accused on page "B" of the proceedings in the presence of the accused. We are constrained to say that the unintended faux pas on the part of the officer holding the Summary Court Martial would not vitiate the entire SCM proceedings looking to indecent behaviour indulged in by the petitioner for the facts and reasons discussed hereinafter.

18. In Para 11 of the said decision, the Court observed as under:

"Again the certificate given by him under Rule 115 (2) of the Army Rules is on a separate paper. The possibility of its being manipulated cannot be ruled out. Such like certificates can be prepared at any time. This justifies the need for obtaining the signatures of the accused viz to lend authenticity to such a record."

19. Learned counsel for the respondents could not cite any decision on the point save saying that certificate on separate sheet would constitute sufficient compliance of Rule 115 (2) of the Army Rules.

20. We now proceed to examine whether the decisions cited above commend for application to the facts of the present case and in this connection, we have to revert to the facts of the case all over again.

21. The allegation against the petitioner is that in the night of 30.01.2001, the petitioner had attempted to commit sodomy on a recruit while serving with No.2 Military training Battalion, Army Medical Corps Centre and School Lucknow at 2330 hours. In this connection, we would also advert to the precise details of the statement made by the victim which being relevant is reproduced below.

"On 30 Jan 2001, I, alongwith all my friends, were sleeping in Building No T/50. At about 2345 hours I was awakened by S.K.Prajapati of my Bn and told me to go to his quarter in Neil line and inform his mother that he will not go to his home that day and will come next day morning. I replied that I do not know his house and hence I will not go. Then he told me to wake up Rect.NA Mithun Kumar Chowdhary of E Coy who was sleeping in the side room of same barrack. He also told me to say to him that Duty JCO was calling him. When Rect.NA Mithun Kumar Choudhary came there, Sep/AA S.K.Prajapti told him to go and sleep in my bed (bed of Rect/G.D Amit Kumar Singh). He went and slept in my bed though he first resisted. Then Sep/AA S.K.Prajati told me to sleep in the bed of Rect/NA Mithun Kumar Chowdhary. I refused then S.K.Prajapti forcibly took me to the bed. First he stripped himself then he stripped me. I objected to it and requested him to please leave him alone but he immobilised me with his strength and threatened me not to make any noise. Fist he gave his penis in my hand and then mounted on me. This time other fellow in the

room (Rect/GD Amitabh Bera) was awakened by hearing of my plea "to leave him alone". Amitabh Bera saw that Ustad S.K.Prajapati was mounted on me. He at once went outside the room and called other rects from the barrack, till then S.K.Prajapati was mounting on me. When all the boys came, he loosened his grip and dismounted. Then I alongwith other rects went to Hav/APTC P.S.Rathore, who was sleeping in his room near P.T Dept and narrated the whole incidence to him. After listening us Hav/APTC PS Rathore and Hav/APTC CL Pradhan told us to go to your barrack and they will sort out the matter. On hearing this we all went to our barrack to sleep. After sometime duty JCO R.N.Sikdar and other NCOs came to our barrack and asked me and Mithun Kumar Choudhary about the incidence and also to give in writing. We both narrated the whole incidence and also gave in writing.

Then the accused was given the right to cross examine the P.W. No. 1 and he put certain questions to the P.W 2 which are detailed below.

"Question No 1. Whether I was under the influence of alcohol or not?"

Answer No 1. Yes you were drunk."

On similar lines are statements of other witnesses who were also cross examined by the petitioner.

22. We have given our thoughtful consideration to the matter. We have gone through the original record. In the course of summary court martial proceeding, a

question was put to him as to whether he was guilty or not guilty of the charge preferred against him. He answered 'guilty'. It would appear from the record that before recording the plea of guilty, the Court explained to him the meaning of the charge to which he pleaded guilty. He was also informed the general effect of the said plea and the difference in procedure, which would be followed consequent to the said plea. The court having satisfied itself that the petitioner understood the charge and the effect of his plea of guilty accepted and recorded the same. It would also transpire that the petitioner was further asked whether he wished to make any statement in reference to the charge or in mitigation of punishment, he declined. In reply to question No 2 put to him, he stated; "I was under the influence of alcohol. I have already said that I am guilty." He was further asked to as to whether he wished to call any witness as to character. He stated 'no'. it would thus appear that all due and necessary opportunities were given to the petitioner before the Summary Court Martial. Plea of guilt was recorded and he was fully apprised of the consequences and effect of the same. There has been no procedural impropriety or irregularity in the conduct of the Court martial proceedings. Thus in our view, no prejudice of any kind can be said to have

been occasioned to him. It would thus transpire that the provisions of Rule 115 (2) of the Army Rules were fully complied.

23. It may be noticed here that it is not a case of the petitioner that plea of guilty had been recorded under duress and that the petitioner was not given opportunity to defend his case as per the provisions of Army Rule.

24. We have searched the entire O.A and there is nothing anywhere in the entire O.A indicating the stand of the petitioner that the plea of guilty was obtained from him under duress. Everywhere, he has pleaded that since he was under the influence of alcohol, he had committed the mistake and prayed for being saved. Even in the statutory complaint preferred to Chief of Army Staff, it was nowhere stated that the plea of guilty was obtained under duress. It would also appear that a certificate was attached bearing signatures of the petitioner under Rule 115 (2) of the Army Rules, 1954. It would also appear that the charge sheet, warning order, summary of evidence, the proceedings and everything relating to the trial was handed over to the petitioner and only then trial took place. Had it been a case of obtaining plea of guilty under duress, the case laws cited above, could well be imported for application to the facts of the present case.

25. We have traversed upon the judgment of Principal Bench. It was a case of overstaying the leave. Besides the petitioner of that case had reported to the Transit camp after 15 days reporting that his village was affected by flood. The view taken by the Principal Bench was that the signatures of the petitioner were not appended on the plea of guilt notwithstanding which the court changed the plea of guilty to not guilty but continued with the trial as if he had pleaded guilty and thus committed gross violation of the provisions of the Army Act and that such illegality has vitiated the trial. Thus the facts of the present case being distinct from the facts of the case relied upon by the learned counsel, the same does not commend to us for being applied to the facts of the present case. Similarly, the decisions relied upon by the Principal Bench and cited above, also being based on facts different from the facts of the present case, do not commend to us for being imported for application to the facts of the present case. Thus, in the facts and circumstances discussed above, we are afraid that the decisions cited across the bar are of no avail to facts of the present case.

26. No other points were pressed into service for consideration of the Court.

27. In view of the above, the petition being devoid of merit, fails and is dismissed accordingly.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: January, 2017.

MH