A.F.R

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO.1 (List A)

O.A. No. 122 of 2011

Tuesday, this the 28th day of February, 2017

"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

Ex- Sep (Barber) Sanjay Kumar Verma (Army No. 13998575Y) Son of Shri Sudarshan Prasad Verma permanent resident of New Basti Bhagwant Nagar, Neelmatha, Lucknow -(UP)- PIN 226002..... **Applicant**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi -110001.
3. Officer In Charge Records, Army Medical Corps PIN- 900450, C/O 56 APO
4. Commanding Officer, 4003 Field Ambulance, C/O 99 APO
5. Commanding Officer, Adm Bn, AMC Centre & College Lucknow

. .....**Respondents**

Ld. Counsel appeared for the Applicant - **Shri K.K.S. Bisht Advocate**

Ld. Counsel appeared for the Respondents - **Shri G.S. Sikarwar, C.G.S.C**

Assisted by OIC Legal Cell **Maj Soma John**

Order

(Per Hon'ble Mr Justice Devi Prasad Singh, Member (J)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 (In short the Áct'), being aggrieved by the order of dismissal dated 19.03.2007, the impugned discharge certificate dated 27.05.2009 and the order rejecting the appeal of the Applicant dated 27.01.2011

2. Shorn of unnecessary details, the facts of the case are that the Applicant was enrolled in the Indian Army as Soldier (Barber) on 24.07.1998 and assigned to Army Medical Corps. He was granted casual leave for 14 days with effect from 04.08.2006 to 13.08.2006 for tending his ailing wife residing at his native place i.e village Deval District Ghazipur. The Applicant arrived at his village on 05.08.2006. According to the averments, since wife of the Applicant was seriously ill, he had to overstay the leave and reported for duty at his Unit i.e. 4003 Field Ambulance on 27.11.2006, where he was advised to report to Administrative Battalion AMC Centre and College, Lucknow. Accordingly, the Applicant reported to Administrative Battalion aforesaid. The Applicant was attached to Administrative Battalion AMC Centre and College Lucknow in pursuance of Army order 7 of 2000 read with paragraph 381 of the Regulations for the Army 1987 Vol 1, Revised Edition. It is alleged that the Applicant was served

with a copy of summary of evidence and tentative charge-sheet on 28.02.2007. Vide letter dated 17.03.2007, the applicant was informed that he would be brought before trial by Summary Court Martial to be held on 19 March at 1100h. The proceeding of Summary Court martial was convened on 19.03.2007 at 11 am and consequently, was dismissed from service and relieved immediately. On 10/11.08.2010, the applicant lost his documents which included document pertaining to his dismissal from service and consequently, he lodged a FIR at Kotwali Kaiserbagh Lucknow. Thereafter on 21.08.2010, the Applicant moved an Application to OIC Records Lucknow for supply of documents under the Right to Information Act, 2005. The documents demanded by the Applicant were forwarded to him on 16.09.2010 (except summary of evidence and tentative charge-sheet) by the AMC records which were received by him on 20.09.2010. The statutory appeal under section 164 of the Army Act 1950 preferred by the Applicant on 11.10.2010 was rejected by GOC Central Command Lucknow on 27.01.2011.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents and have also gone through the materials on record.

4. While assailing the impugned orders, the learned counsel for the Applicant submits that during SCM proceeding, the expression

'pleaded guilty' was recorded in contravention of Army Rule 54 without Applicant's consent, and that arraignment of charges has not been done in accordance with the procedure provided by Army Rule 48. It is further submitted that the document containing expression 'pleaded guilty' does not bear signature of the Applicant which goes to show that it was done without the consent of the Applicant. The comment of Reviewing officer, it is also submitted, is not in conformity with section 162 of the Army Act and the summary of evidence has been recorded in utter disregard of Army Rule 23. It is further submitted that the friend of accused, Lt N.K.Tripathi has not provided any assistance and further that the charges were not framed in accordance with Army Rules 30 and 31. Learned counsel for the Applicant further submits that the respondents themselves admitted that the Applicant's character has been exemplary and hence he cannot be held to be habitual offender of overstaying the leave in order to warrant major penalty of dismissal from service without recording the genuineness of Applicant's overstaying the leave.

5. **Per contra**, learned counsel for the respondents vehemently defended the impugned orders submitting that the Applicant overstayed the leave without reasonable cause and further that he was a habitual offender on this count. Hence he has been rightly

dismissed from service upon voluntarily pleading guilty attended with further contention that he had apologised and pleaded to be spared.

6. **Summary of evidence**

Summary of evidence is recorded under Army Rule 23. According to learned counsel for the Applicant, the summary of evidence was recorded in his absence though it appears that since the Applicant has been punished from SCM proceedings and accordingly, court of inquiry could have been held but record shows that SCM was held. For the sake of convenience, Rule 23 of the Army Rules which deals with the procedure for taking down summary of evidence is being reproduced below.

> ***´23. Procedure for taking down the summary of evidence.***— *(1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.*
>
> *(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.*
>
> *(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or If he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked; "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read over to him, but he will*

not be cross-examined upon it. The accused may then call his witnesses, including if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

NOTES

1. The adjourned hearing for the purpose of reducing the evidence to writing should if possible be held on the same day as the investigation. The CO may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The adjutant or the accused's squadron or company commander, should usually be detailed (see also note to AR 43). The record of evidence under this rule is called 'the summary of evidence' The summary of evidence can be ordered only by the CO of the accused. See AR 22(3)(c). When it is recorded under the orders of an officer other than the accused's CO, summary disposal of a charge under AA.ss. 83, 84 or 85 or the trial of the offender by GCM or DCM on the basis of such a summary of evidence may render the proceedings invalid.

2. Summary of evidence cannot be taken on oath or affirmation.

3. The accused cannot claim to be represented by counsel at the taking of summary of evidence.

4. The evidence (so far as it is relevant and admissible) of every witness who gave evidence before the CO must be taken down unless good reason renders if not reasonably practicable to call him. The evidence of witnesses who did not appear before the CO may also be taken for either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded.

5. The accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between

the evidence taken down and that given before the CO. If the accused declines to cross-examine any witness the fact should accordingly be stated.

6. The formal caution provided for in sub-rule (3) must be given as soon as the evidence for the prosecution is closed. If it is necessary to take additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary. It is advisable to have an independent witness

THE ARMY RULES, 1954 WITH NOTES

8. The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary; but he is not bound to call a witness because such witness gave evidence before the CO.

9. The certificate referred to in sub-rule (5) can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

10. In many cases, the provisions of sub rule (5) will effect a saving of time and expense, e.g., where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.

11. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, an abstract of the evidence to be given by him should be supplied to the accused as early as possible. See AR.135 and notes thereto.

12. For the issue of summons see AA.s.135. For form of summons, see Appendix III Part III.

13. For power to dispense with sub-rules (1) to (5) see AR.36,

14. For memoranda for the guidance of officers taking down a summary of evidence, see pages 430 to 433."

7. A plain reading of the aforesaid provisions shows that the accused shall be permitted to cross examine the witnesses and answers given shall be added to the evidence on record. It is further provided that after recording evidence of the witnesses, the same shall be read over to the accused and shall be signed by him. All the

evidence recorded during the course of summary of evidence shall be read over to the accused and he shall be asked to whether he or she wishes to make any statement. It shall be open to the accused to call his witnesses in defence. The statement shall be recorded in English language but in case the accused does not understand English language, the evidence or statement so recorded shall be interpreted to him in a language that he understands. In any case, if a person is unable to attend the summary of evidence, written statement of his evidence purporting to be signed by him shall be read over to the accused and included in the summary of evidence.

8. A perusal of the summary of evidence shows that statements of witnesses recorded are in English and are hand written with endorsement that the accused was asked to cross examine the witnesses but he declined. Though the witnesses stated that the statements have been read out in English which they understand and they signed but the same do not contain signatures of the Applicant as required by Rule 23 of the Army Rule. It also does not contain any endorsement that the statements of prosecution witnesses recorded during summary of evidence were also read out to the Applicant in English. The only thing which seems to have been done during the course of summary of evidence is that the Applicant's own statement has been recorded which being relevant is being quoted below.

"I was posted in 4003 Fd Amb C/O 99 APO wef Jan 2006. On 04 Aug 2006 I had proceeded on 10 days casual leave from 4003 Fd Amb. My reporting date on duty was 13 Au 2006, but due to my family problem, I was unable to report on duty and thus overstayed leave for 106 days without giving any intimation to my unit.

I belong to Ghazipur (OP). I have two children only. My wife is suffering form mental illness since marriage. During 10 days casual leave, I showed her to a Panditji but there was no any sign of improvement in her health condition. During the year 2001 also while I was posted at 329 Fd Amb C/O 56 APO, I had overstayed leave two times due to her illness.

Now she has partially recovered from her illness. Therefore I voluntarily joined on duty on 27Nov 2006 at Adm Bn AMC Centre and School Lucknow for finalisation of my case.

I agreed that I have done a great mistake by deserting from service. I belong to a very poor family and I want to continue my service in Army. Therefore, I may please be retained in the service."

9. A plain reading of the statement of the Applicant recorded during summary of evidence bespeaks that he has brought on record compelling circumstances for which he overstayed the leave by 106 and odd days. He also stated that he voluntarily joined the service on 27.11.2006 and accepted that for compelling reasons, he overstayed the leave and expressed desire to continue in service.

10. It would appear from the above conspectus that the provisions contained in Army Rule 23 have not been observed in compliance

and by this reckoning, as evident from the record, the summary of evidence seems to be suffering from vice of arbitrariness.

11. Apart from the above, Army Rule 180 also requires that incumbent should be present at the time when evidence is recorded at pre-trail stage.

12. **Arraignment**

Arraignment of charges is to be done in required format in terms of Rule 48 of the Army Rules. The said Rule being relevant is quoted below.

> "48. Arraignment of accused**. — (1) After the members of the court and other persons are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him. THE ARMY RULES, 1954 WITH NOTES**
>
> (2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.
>
> *NOTES*
>
> *1. The accused should be arraigned by the presiding officer or JA (if any).*
>
> 2. "Arraignment" consists of (a) calling upon the accused by his number (if any), Rank, Name and Description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)"; (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.
>
> *3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets; than one against an accused, he must be arraigned and until after the finding tried upon the first charge-sheet, before arraignment upon the second or subsequent charge-sheet; see AR.79.*
>
> *4. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the presiding officer (AR 37(4)), who will lay the charge-sheet before the court immediately before arraignment, and the chargesheet will then be annexed to the proceedings.*

5. The plea of the accused must be taken on all the charges in a chargeheet. This applies to alternative charges if the accused has been arraigned upon them, but see AR 52(3).”

13. On the face of record Army Rule 48 requires that the charges upon which the accused has been punished shall be read over and if necessary, translated to him and shall be required to plead separately to each charge. The accused shall also have right to object to the charge under Army Rule 49. SCM proceeding has been filed which reveals that in the column Ánswer’, the name of the Applicant has been written with endorsement of ‘guilty’. There appears to be no compliance of Sub-rule (1) of Army Rule 48. For ready reference, the portion of arraignment recorded during SCM proceeding being relevant is quoted below.

“ 13998575-Y Sepoy Sanjay Kumar Verma of 4003 Field Ambulance C/O 99 APO attached with Administrative Battalion AMC Cntre & School Lucknow – 226002.

Question to the accused By the Court How say you ----- are you guilty or not guilty of the first charge

Sd/- x x x x
(H S Bisht)
Col

Answer Guilty
A-1

Sd/- x x x x
(H S Bisht)
Col

Question -2 Are you guilty or not guilty of the second charge

Sd/- x x x x
(H S Bisht)
Col

Answer -2 *Guilty*

Sd/- x x x x
(H S Bisht)
Col

The accused having pleaded guilty to both the charge the provision of Army Rule 115 (2) are here complied with.

Sd/- x x x x
(H S Bisht)
Col"

14. The arraignment is the accusation against the accused. After sanction by authority in pursuance of Section 120, a person cannot be charged for an offence unless he has been read over the charges upon which the accused is arraigned and the same shall be read over and if necessary be translated in his or her language. Sub rule (2) of Rule 48 (supra) is meant to comply with the principles of natural justice flowing from the maxim **"Audi altem partem"** that is why under Rule 48, the accused has right to raise objection to any charges on the ground that it does not disclose any offence under the Army Act or is not in accordance with these rules. The compliance with sub rule (2) of Rule 48 of the Army Rules is mandatory and it is necessary to comply with sub rule (2) of Rule 48 of the Army Rules 1954. Though arraignment has been made in the required format (supra), but it should have been duly complied with by making appropriate endorsement in terms with Sub

rule (2) of Rule 48 of the Army Rules 1954 in respect of writing the name, address and designation of the accused. A gross illegality has been committed during SCM proceeding by the presiding officer.

15. **Guilty**

The next limb of argument of the Applicant is that the relevant column containing the expression guilty recorded during summary of evidence, does not bear his signature. The factual foundation seems to be correct and there is no signature of the Applicant in the column bearing expression 'guilty' recorded during the course of SCM proceeding. The recording of provision of Army rule 115 (2) is on a separate sheet. The same has been signed by the accused and the Presiding Officer.

16. The Applicant has raised the plea of procedural irregularities, disproportionality of sentence and the factum of the Applicant never having pleaded guilty. It is submitted that the plea of guilt could not have been recorded without getting an endorsement on the part of the Applicant by his signatures. Learned counsel for the Applicant in respect of the aforesaid has relied upon a decision of the Division Bench of Delhi High Court in **LPA No.254/2001 titled The Chief of Army Staff & Ors. Vs. Ex. 14257873 K Sigmm Trilochan Behera decided on 17.1.2008**. The provision in both the Army and the BSF are almost identical. Rule 142 of the Border Security Force Rules,

1969 (hereinafter referred to as the said Rules) stipulates how General plea of "Guilty" or "Not Guilty" should be recorded, which reads as under:

> *"142. General plea of "Guilty" or "Not Guilty". - (1) The accused person's plea of "Guilty" or "Not Guilty" (or if he refuses to plead or does not plead intelligibly either one or the other), a plea of "Not Guilty" shall be recorded on each charge.*
>
> *(2) 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 record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.*
>
> *(3) Where an accused person pleads guilty to the first two or more charges laid in the alternative, the Court may after sub-rule (2) has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges as follow the charge to which the accused has pleaded guilty without requiring the accused to plea thereto, and a record to that effect shall be made in the proceedings of the Court."*

17. The judgement in **The Chief of Army Staff & Ors. Vs. Ex. 14257873 K Sigmm Trilochan Behera** case (supra) also dealt with the question of guilt in a similar situation. It was observed as under:

> *"5. Secondly, the signatures of the respondent were not obtained on any of these proceeding. The plea of the respondent was recorded on a printed format. The column of arraignment reads as under :*
>
> *"By the Court-How say you No. 14257873K ULNK Trilochan Behera are you guilty or not guilty of the ..... charge preferred against you?" Ex. Naik Subhash Chander vs Union Of India & Ors. on 8 September, 2008 Indian Kanoon - http://indiankanoon.org/doc/178614651/ 3 The answer is recorded as "Guilty". It does not mention what was the charge though a separate chargesheet has been placed on record which is dated 22nd March, 1994, which is not signed by the respondent. The complete plea of guilt of the respondent was not recorded.*

18. In **Sashidhara Kurup Vs. Union of India and Ors., 1994 Cri.L.J., 375 (Gauhati)**, his Lordship Dr.H.K.Sema, the then judge of the High Court, was pleased to hold:

> *"7..... Recording of the plea of the accused as nearly as possible in the words which is used by the accused has an important significance because unless the plea of the accused is recorded as nearly as possible in the words which is used by the accused the appellate court is deprived of the privilege to examine as to whether the plea made by the accused amounts to admission of guilt or not."*

However, in the next page, the following question was posed to the respondent:

> *"Do you wish to make any statement in reference to the charge or in mitigation of punishment?" This question was put to the*

respondent after he had pleaded guilty, to which the respondent replied, "I repent for the mistake I have done. I want to continue serving as my family is dependent on my income only."

It is also noteworthy that no date is mentioned on this paper.

19. Learned Counsel for the respondent has drawn our attention towards Guide to Summary Court Martial issued in the year 1984, Heading (b) Arraignment at pages 7 & 8, it is mentioned:

"(iii) 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 signature thereon :- "Before recording the plea of guilty offered by the accused, the Court explains to the accused the meaning of the charge(s) to which he had pleaded guilty and ascertains that the accused understands the nature of the charge(s) - to which he has pleaded guilty. The Court also informs the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court having satisfied itself that the accused understands the charge(s) and the effect of his plea of guilty accepts and records the same. The provisions of Army Rule 115(2) are complied with."

(Signature)

(Signature)

Accused

The Court

(iv) Failure to comply with the procedure explained in sub-para 16(b) (iii) above will amount to violation of the procedural safe guard provided in AR 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 v. Union of India (J & K) 1984 (3) SLR 680.)"

20. In **Prithpal Singh Vs. Union of India and others(supra) that is, 1984(3) SLR 675 (J & K),** it was held :

"9. Coming to the present case, I have stated the requirement of Rs. 115 and 129 of the army Rules. The procedure laid down in the said Rules cannot be observed in breach by Summary Court Martial. It is revealed from the record that at no stage the Applicant had accepted Mr. Arun Dhar as a friend under R. 129 yet he was imposed on him against his wish. This would amount denial of right to the person in having a friend to assist him as required by R.129 of the Army Rules. So the proceedings conducted cannot be termed to be fair because an important right of the Applicant was arbitrarily taken away in violation of Art. 14 of the Constitution. He was to be given equal protection of laws that protection has been denied to him. Therefore, the decision taken by the Summary Court Martial in awarding punishment to the Applicant is tainted with arbitrariness and unfairness."

10. The most important aspect of the case is as to whether the Applicant had pleaded guilty to the charges as is suggested by the Counsel or not Plea of guilt recorded in SCM is dehors R.115 of the Army Rules. In the first place the alleged plea of guilt is unsigned by the authorities. Surprisingly the Applicant

also has not signed the alleged plea of guilt. At what stage word "guilty" was recorded against each charge is not known. If it was recorded in presence of the accused/Applicant obviously his signatures would have been obtained on it. Then the minutes of the enquiry should have contained an advice to the Applicant not to plead guilty as enjoined by R. 115 of the Army Rules. This important mandate of the Rule has been flagrantly violated. Therefore the proceedings conducted by the Summary Court Martial which have affected the Applicant's fundamental rights as he is deprived of his job are vitiated. The protection afforded by the procedure should not have been denied to the Applicant if it was intended to proceed against him under the Army Rules. As to whether charges were correct or not as already observed this court cannot go into that aspect of the matter. But certainly this court will set aside the punishment which is awarded to the Applicant on the ground that the decision to punish the Applicant was taken by contravening the mandate of Rules. Such a decision would be arbitrary and shall be violative of the guarantees contained in Art. 14 of the Constitution. The argument of the learned counsel for the respondent that the Applicant was not prejudiced in any manner during the Summary Court Martial proceedings is devoid of force. The Applicant has suffered punishment of dismissal from service and the punishment is awarded by conducting proceedings in such a manner which were neither fair not judicial. Could the Summary Court Martial observe the Rules governing the conduct of Summary Court Martial in breach. Answer to this question will be emphatic no in view of the glory of the Constitution and rights guaranteed by it."

21. A similar provision being Rule 115 (2) of the Army Rules was discussed in paras 10 to 14 of the judgement, the same read as under:

"10. It clearly goes to show that this certificate was prepared after the respondent had pleaded guilty. This is apparent that the provisions of Rule 115(2) were not complied with. The said rule runs as under:

"115. General plea of "Guilty" or "Not Guilty".

(1) XXXX

(2) 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 to plead not guilty.

(3) XXXX"

22. This formality should have been done before the plea of guilt of the respondent was recorded. There is no indication in the charge that the Commanding Officer had already observed this formality. The preparation of order-sheets would have gone a long way to illustrate the position more vividly on this hazy record. 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. It cannot be ruled out that 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.

23. In a recent authority reported in **Sukanta Mitra Vs. Union of India and Ors., 2007 (2) 197 (J & K),** it was held:

> *Ex. Naik Subhash Chander vs Union Of India & Ors. on 8 September, 2008 Indian Kanoon - http://indiankanoon.org/doc/178614651/ 6 "9. 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. 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 a 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.*

24. In **Lachhman (Ex. Rect.) Vs. Union of India & Others, 2003 II AD (Delhi) 103,** it was held :

> *"13. 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 inasmuch 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 Applicant 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 Applicant had entered into the plea of guilt stands on highly feeble foundation."*

25. The learned counsel for the respondent also cited a case reported in **Uma Shanker Pathak Vs. Union of India and others, 1989 (3) SLR 405** by Allahabad High Court, wherein it was held :

> *"10. The provision embodies a wholesome provision which is clearly designed to ensure that an accused person should be fully forewarned about the implications of the charge and the effect of pleading guilty. The procedure prescribed for the trial of cases where the accused pleads guilty is radically different from that prescribed for trial of cases where the accused pleads 'not guilty'. The procedure in cases where the plea is of 'not guilty' is far more elaborate than in cases where the accused pleads 'guilty'. This is apparent from a comparison of the procedure laid down for these two classes of cases. It is in order to save a simple, unsuspecting and ignorant accused person from the effect of pleading guilty to the charge without*

being fully conscious of the nature thereof and the implications and general effect of that plea, that the framers of the rule have insisted that the court must ascertain that the accused fully understands the nature of the charge and the implications of pleadings guilty to the same.

13. It is thus apparent that the questions and answers have to be reproduced by the Court in their entirety, which, in the context of Army Rule 115 (2), means all the questions and answers must be reproduced verbatim. In the present case however, the Court has not done this. Instead the Court merely content itself with the certificate that "the provisions of Army Rule 115 (2) are here complied with".

26. The aforesaid judgment has been considered by the Division Bench of Delhi High Court in the case in **Subhash Chander (Ex. Naik) v Union of India (Delhi) reported 2008 (9) AD (Delhi) 2110**. The Delhi High Court recorded its finding as under:

"11. The present case is also similar inasmuch as the blanks have been filled in with the plea of guilt and a similar procedure has been followed without getting the signatures of the Applicant appended.

12. The Applicant was disputing the offence as is obvious from his statement and was seeking to defend himself in the proceedings and despite this fact the plea of guilt has been recorded which is unsustainable."

27. The evidence on record and copy of SCM proceeding at the face goes to show that the word 'guilty' has been recorded without following procedure contained in Army Rule 48 with regard to arraignment. Even otherwise, in view of Army Rule 54 in case guilty

is recorded, the procedure prescribed therein should have been followed. For ready reference, Army Rule 54 is being quoted below.

> **"54. Procedure after plea of "Guilty"**. — (1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not Guilty", the trial shall first proceed with respect to the latter charges, and after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered, but if there are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge or may subject to sub-rule (2), instead of trying him record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.
>
> (2) Where alternative charges are preferred and the accused pleads "Not Guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court shall try him as if he had pleaded "Not guilty" to all the charges.
>
> (3) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary of evidence, and annex it to the proceedings, or if there is no such summary shall take and record sufficient evidence to enable it to determine the sentence and the confirming officer to know all the circumstances connected with the offence. This evidence shall be taken in the manner provided in these rules in the case of plea of "Not Guilty".
>
> (4) After evidence has been so taken, or the summary of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.
>
> (5) If from the statement of the accused or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not Guilty", and proceed with the trial accordingly.
>
> **(6) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rule (3) and (4) shall take place when**

the findings on the other charges in the same charge sheet are recorded. THE ARMY RULES, 1954 WITH NOTES

7 When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

NOTES

1. An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily cannotes guilt upon the alternative charge or charges. See AR 62(7).

2. Where two alternative charges are preferred and the accused pleads "Not guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court should try him as provided by sub-rule (2), as if he has pleaded "Not guilty" to both charges. Having regard to AR 52(3), the most serious of two or more alternative charges should always be placed first in a charge-sheet.

3. For procedure when statement made by the accused with reference to the charge, is inconsistent with his plea; see notes 5 and 6.

4. The accused will always be asked, in case of a plea of "Guilty", whether he desires to call witness to character.

5. The statement referred to in sub-rule (5) includes a statement made by the accused under sub-rule (3) in reference to the charge, as well as a statement made in mitigation under sub-rule (4).

6. The following examples are given of cases in which a plea of "Guilty" should be altered to a plea of "Not guilty" under sub-rule (5): —

(a) Sepoy A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back".

(b) Sepoy B, charged with using criminal force to his superior officer, states, "I only did it to defend myself after he had struck me".

(c) Sepoy C is charged with sleeping upon his post when a sentry He makes no statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses state that Sepoy C was beyond the confines of his post when found asleep.

(d) Naik D is charged with disobeying a lawful command given by Naik E, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Naik E is junior to Naik D. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in sub-rule (5).

> *7. The test to be applied in all such cases is not whether the court believes the statement, but whether, if the statement was true, it would be a valid defence to the charge. In doubtful cases, the plea of "Guilty" should be altered to a plea of "Not guilty"8. If the court fails to act under the provisions of sub-rule (5), the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside*
>
> *9. Where the accused alleges provocation for the offence, it may be desirable to record a plea of "Not guilty"; see note 6 to AR 52.*
>
> *10. In any case where the court is empowered to come to a special finding under the provisions of AA.s.139 or AR 62(4) and (5), the court may accept a qualified plea of guilty in respect of an offence sec AR.62(9).*
>
> *11. Although under sub-rule (7) the permission of the court is required to enable the accused to call witnesses in extenuation of the offence, and consequent mitigation of punishment, such permission should always be given.*
>
> *12. For procedure in case of joint trials where one accused pleads guilty and the other not guilty, see note 4 to AR 35."*

28. There is nothing on record which may go to show that during SCM proceeding, the Applicant was cautioned by the Commanding officer with regard to effect of pleading guilty or he has applied his mind to follow mandatory provisions contained in Army Rule 54. The record indicates that besides Applicant's admission overstaying the leave and tendering of apology, he has also enumerated the compelling circumstances due to which he overstayed the leave. It is surprising that no finding has been recorded with regard to satisfaction of the Commanding officer in terms of section 39 (b) of the Army Act. It is settled by the Tribunal in a catena of decisions that the provisions contained in section 39 (b) entirely stand on different footing other than the provisions contained in section 39 (a) of the Army Act to declare a person deserter. **Thus, we have no alternative but to hold that the respondents have not**

complied with the statutory provisions while passing the impugned order of punishment relying upon the confession of the Applicant by holding guilty.

29. **Reviewing Officer**

Section 162 of the Army Act 1950 postulates that after finding of guilt during court martial, the proceeding shall be transmitted to Reviewing officer. The Reviewing Officer for reasons based on merit of the case may set aside the proceedings or reduce the sentence to any other sentence which the Court might have passed. Section 162 being relevant is quoted below.

> ***"162. Transmission of proceedings of summary court-martial.*** *— The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the (Chief of the Army Staff)1, or any officer empowered in this behalf by the (Chief of the Army Staff)1 may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.*
>
> *NOTES*
>
> *1. 'Division or brigade': also area and sub area. See table under SRO 135-A dated 22 Jul 1950 (Part IV).*
>
> *2. Prescribed Officer. —See AR 200.*
>
> *3. The proceedings of a SCM cannot be sent back for revision and do not require confirmation, and any sentence passed by the court should, except as provided in AA.ss.161(2), 182 and 183 and AR 132, be put into execution forthwith.*
>
> *4. Under this section and AR133 the proceedings must be forwarded for review to the reviewing authority (through the DJAG of the Command in which the trial is held), who, if he considers that justice has been done, should countersign the proceeding!; and return them to the accused's corps for preservation. (AR 146). If a direction under AA.s.182 has been passed, he should issue his orders thereon, or, if not himself the authority/officer specified in AA.s.182, forward the proceedings to such an authority/officer for orders. The reviewing authority can, for reasons based on the merit of*

the case', but not on merely technical grounds (as to which, see note to AR 133), set aside the proceedings or mitigate, remit or commute the sentence. If the sentence is illegal he must set it aside, or under AA.s.163 a valid sentence may be substituted by one of the authorities mentioned in AA.s.179.

5. A sentence of imprisonment for three months or less unaccompanied by dismissal should normally be undergone in military custody. See AA.s.169 and notes thereto. A reviewing authority may direct that such a sentence should be undergone in military custody, either when reducing a sentence of imprisonment to three months or less or when the court omits to add such a direction to the sentence. But in the former case if the accused is sent to a civil jail, his consent for being reinstated in the service after the expiration of the sentence is necessary in view of the provisions of AR 168.

6. As to the scale of punishments awardable by SCsM see Regs Army para 448."

30. While going through the record, it transpires that in the column meant for Review Officer, no reason has been assigned in compliance of the provisions contained in section 162 of the Army Act. There is only signature with counter signature indicating that the order was promulgated on 19.03.2007. Therein, there is no whisper of the finding recorded during summary of evidence by the Reviewing officer. **Thus it crystallizes that the statutory mandate as contained in section 162 of the Army Act has not been observed in compliance.**

31. **Charges**

There are only two charges framed against the Applicant. Firstly, under section 39 (b) read with section 63 of the Army Act.

The first charge pertains to overstaying of leave while the second charge under Section 54 (B) relates to deficiency of certain items like clothing and other things. For ready reference, both the charges are quoted below.

"FIRST CHARGE ARMY ACT SECTION -39 (b) WITHOUT SUFFICIENT CASUE OVERSTAYING LEAVE GRANTED TO HIM

in that he,

at field, on 14 August 2006, having been granted leave of absence from 04 August 2006 to 13 August 2006 (10 days casual leave for the year 2006), failed without sufficient cause to rejoin duty and remained so absent till surrendered voluntarily at Administrative Battalion, Army Medical Corps Centre and School Lucknow on 27 November 2006 at 1400hrs.

SECOND CHARGE *LOSING BY NEGLECT PERSONNEL CLOTHING AND OTHER*

ARMY ACT SEC 54(B) *THINGS PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE.*

In that he,

At field, on 04 October 2006, found deficient of the following clothing and other things, the property of the Govt issued to him for his use valuing Rs. 579.00

Ser No	Nomenclature	A/U	Qty	Amount
1.	Durrie 183cm x 92 cm	Nos	01	26.00
2.	Blanket BK	Nos	01	144.00
3.	Net Mosquito 'U'	Nos	01	149.00
4.	Disc Identity Oval	Nos	01	04.30
5.	Yokes	Nos	01	11.25
6.	Pack Web 08	Nos	01	139.00
7.	Blanket EI	Nos	01	72.00
8.	Boot DMC	Prs	01	33.90
		Total	Rs.	579.00
		R/Off(-)	Rs.	0.45
		G/Total	Rs.	579.00

Sd/x x x x x
(Hukum Singh Bisht)
Colonel
Commanding Officer
Administrative Battalion
Army Medical Corps Centre & School
Lucknow."

Place : Lucknow
Dated : 13 February 2007

32. Coming to charge framed under section 39 (b) of the Army Act, section 39 (b) being relevant is quoted below.

> ***"39. <u>Absence without leave</u>.—*** *Any person subject to this Act who commits any of the following offences, that is to say,—*
>
> *(a) absents himself without leave; or*
>
> *(b) without sufficient cause overstays leave granted to him; or*
>
> *(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or*
>
> *(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or*
>
> *(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or*
>
> *(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place, prohibited by any general/ local or other order, with out a pass or written leave from his superior officer; or*
>
> *(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;*
>
> *shall,on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.*
>
> *NOTES*
>
> *1. Two or more accused should not be jointly charged with an offence under this section.*

2. Clause (a): The criterion between desertion and absence without leave is intention. Where all the ingredients of the offence of desertion are present except an intention not to return to the service or to avoid some important military duty, the offence will be one of absence without leave or any other offence of this genus e.g., failure to appear at the time fixed at the parade.

3. (a) Absence without leave must not be involuntary absence e.g., due to illness or being taken into civil or military custody, whether on surrender or apprehension. However, the mere reporting by an absentee to a provost officer or M.C.O. or the fact that such provost officer or M.C.O. orders the absentee to return to his unit will not terminate the voluntary absence; which will continue to run until the absentee rejoins his unit.

(b) To render an absence involuntary there must be some physical impracticability, outside the control of the offender, that prevents his return to his unit. Inability to return to his unit through intoxication which is an offence under AA.s.48 will not make such absence involuntary nor would an inability which arises through lack of money or loss of his railway or other ticket. Further, where the absence without leave was originally voluntary and has by change of circumstances, subsequently become involuntary the offender may be convicted of absence for the whole period. Similarly, an absence that was originally involuntary becomes voluntary, if the offender fails to return to his unit at the earliest practicable moment e.g., failure to return on release from a civil prison.

(c) Where the prosecution proves that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by the accused, infer that the absence was voluntary.

4. (a) A court considering a charge under this section should consider ''was the accused at the place where his duty required him to be?"

(b) An offence under this section is one of absence without leave, and not merely absence. Leave of absence must be notified to the applicant for such leave. A person who has applied for leave, and departs from his unit before it is actually granted, commits the offence of being absent without leave, even though the leave had been granted but not notified to him.

(c) When evidence has been given of the accused's absence, or failure to appear at the place required, and that evidence is sufficient to raise an inference that he had no leave of absence, then the court may look to the accused to provide evidence, by way of defence, for his "leave", "sufficient cause" or "due cause" as the case may be.

5. (a) For proof of commencement and termination of absence see note 11to AA.s.38.

(b) The particulars of a charge of absence without leave should state the date when the absence began and terminated. Where the exact hour of the absence is material for the purpose of proving a whole day's absence, as it may be under the provisions of AA.s.92, the hour of the offender's departure and return should also be stated in the particulars of the charge.

(c) Where, for some reason, it is not possible to prove the exact dates of commencement and termination of the absence, but it is possible to show that an absentee was at some place other than his place of duty ,at charge under AA.s.63 alleging that he was improperly at one place; whereas his duty required him to be elsewhere may be preferred.

6. Under AA.s.90(a), read with P & A Regs (Officers), an officer automatically forfeits all pay and allowances due to him for every day he absents himself without leave or overstays the period of his leave unless a satisfactory explanation has been given to his CO and has been approved by the Central Govt. AA.s.91(a),read with P & A Regs (OR), makes such deductions also automatic in the case of persons subject to AA other than officers; the CO of such absentee can, however, remit such penal deduction if the absence does not exceed five days; AR.195(b). The penal deductions under AAss.90(a) and 91(a) may be made without the absentee being convicted by court-martial or dealt with summarily under AA.ss.80, 83 or 84.

7. Under AA.s.139(1) and (2), a person subject to AA and charged with desertion or attempted desertion may be found guilty of absence without leave but not vice versa. Also see note 5 toAA.s.38.

8. When a person has been absent without leave for 30 clear days or has overstayed his leave without sufficient cause for that period, a court of inquiry will be assembled under AA,s.106. Also see AR 183.

9. Under AA.s.120(3), a CO can try by SCM a NCO or a sepoy under his command for an offence under this clause. For the circumstances when a CO other than a CO of the unit to which a NCO or OR properly belongs, can try an offence under this clause see note (c) to AA.s.38.

10. If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused states in his defence any sufficient or reasonable cause for his absence and refers in support to any officer in the service of the Govt. it is the duty of the court to address such officer if it appears that such officer may prove or disprove the accused's statement;

AA.s.143. Failure to comply with this provision may result in annulment of the proceedings.

11. Clause (b).—This offence is basically the same as in clause (a); except that the absence becomes illegal only after the expiry of his authorised leave; whereas under clause (a) the absence is illegal ab-initio.

12. If it is proved that a person subject to the AA. has overstayed his leave, it will be for him to show that he had sufficient cause (e.g., sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

13. Clause (c)— Charges under clauses (c), (d), (e) or (g) should not ordinarily be preferred as any offence under those clauses must almost invariably amount to an offence under clause (a) and a charge under the latter clause is simple to prove.

14. Without sufficient cause: see note13 above.

15. Corps—sees AR 187(3).

Department.—see AA.S.3(ix).

Active service.—see AA.s.3(i).

16. Clause (d).—(a) before a conviction can be obtained under this clause, it must be proved that the time was fixed and the place appointed by competent authority, and that the accused was aware of this fact. These facts are sometimes difficult to prove and therefore a charge of absence without leave under clause (a) is usually more practicable. See also note13 above.

(b) A person who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(c) Absence from a parade etc., through intoxication should not be charged under this section but under AA.s.48 for intoxication. Ignorance of the order for the parade, although exposing the offender to a charge under AA.s.63, for failing to acquaint himself with the order as required by Regs Army para 324, will not render him liable to a conviction under this clause. Where a reasonable misapprehension of the order exists, based on lack of clarity in the terms of the order itself, this may, in certain circumstances amount to a good defence to the charge.

17. Clause (f).—'Camp' includes a bivouac and any quarters, shelter, or other place where troops are temporarily lodged.

18. 'General, local or other order's—The orders specified in this clause are standing orders or orders in writing and applicable continuously over a period of time to persons present in a certain geographical area or in a certain military formation. Ignorance of the order is no excuse if the order is one which the accused ought, in the ordinary course, to know. But a misapprehension reasonably arising from want of clarify in the order is a ground for exculpation. The existence of the order must be proved by producing it or a certified copy where so permissible under AA.s.142(4) on oath/affirmation to the court. A written order cannot be proved by oral testimony. Evidence must also be led to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents.

19. (a) A charge alleging "without a pass or written leave from his superior officer would be a good charge under this clause, since it is a single offence for him to have neither a pass nor written leave. On the other hand, a charge alleging "beyond the limits fixed by general or local orders" would be bad since it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by local orders (see AR 30).

(b) Without a pass or written leave from his superior officer.—These words are in the nature of an exception, and on being proved that the accused was found beyond fixed limits, it will rest on him to show that he had the proper authority.

20. Superior officer. See AA.s.3(xxiii).”

33. It appears that the charges were framed exactly as provided under section 39 (b) of the Army Act. A comparison between 39 (a) and 39 (b) of the Army Act reveals that under section 39 (a) if a

person is absent without leave, it is a serious misconduct more-so when it is a case of Army or Armed Forces, requires severe punishment under the Act but if it is a case under section 39 (b) of the Army Act, it is subject to pre-fix or condition that absence or overstaying leave should be without sufficient cause. The Legislature in their wisdom has used the expression "without sufficient cause". Accordingly, while awarding punishment to a member of Indian Army for overstaying the leave, it shall be incumbent upon the authority concerned to indicate in the punishment order "if punished" that the accused overstayed the leave without sufficient cause. To our dismay, no finding has been recorded during SCM proceeding that the Applicant overstayed the leave without sufficient cause. Rather in his statement recorded during summary of evidence, the Applicant has categorically enumerated the compelling reasons for which he overstayed the leave for 106 days or odd.

34. In the case of overstaying the leave without sufficient cause, it would be necessary for the Disciplinary authority to afford opportunity to the charged officer to assign reasons. Otherwise also, the reasons are pulse beat of Indian Constitution and in the absence of reasons, the punishment order shall become illegal.

35. Hon'ble Supreme Court in the case of Asstt Commissioner commercial Tax Department Works Contract and Leasing Quality Vs

Shukla and Brothers held that it shall be obligatory on the part of judicial or quasi judicial authority to pass a reasoned order while exercising statutory jurisdiction. Their Lordships held that reason is very life of law. When the reason of law once ceases, the law generally itself ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. It is the soul of orders. Non-recording of reasons could lead to dual infirmity; firstly it can cause prejudice to the affected parties and secondly, more particularly it hampers proper administration of justice. The concept of reasoned judgment has become an indispensable part of basic rule of law and in fact is a mandatory requirement of the procedural law.

In number of other cases, Hon'ble Supreme Court ruled that authorities have to record reasons; otherwise it may become a tool for harassment of the delinquent in the hands of the authority. (Vide K.R. Deo vs Collector of Central Excise Shillong AIR 1971 SC 1447; State of Assam and Anr Vs J.N.Roy Biswas AIR 1975 SC 2277; SDtate of Punjab Vs Kashmir Singh 1997 SCC (Labour Service) 88; Union of India Vs P.Thayagharajan AIR 1999 SC 449; Union of India Vs K.D.Pandey (2002) 10 SCC 471).

36. **In this view of the matter, we have no alternative but to converge to the opinion that in the absence of finding in terms**

of clause 39 (b) during SCM proceeding, the punishment awarded to the Applicant on this count is vitiated.

37. So far as deficiency of material costing Rs 538 is concerned, we are of the view that whenever some material or things are lost or found to deficient, then still, punishing a person for such a meagre amount, (in the present case materials costing Rs 538) would be undesirable inasmuch as the Authority could have directed the person to make good the loss by depositing the amount in question.

38. It may be noticed that while framing charges only reason assigned is that the Applicant was found to be deficient in certain items while leaving field area. In the rejoinder affidavit, it has been submitted by the Applicant that even at the stage of dismissal form service, his previous service track record has been indicated to be exemplary (Annexure A-1 to the OA). It is also stated that kit box, hold-all, hand bag containing the personal belonging of the Applicant were produced by the Applicant at the time of court of enquiry in 4003 Field Ambulance. Neither in the counter affidavit nor after filing rejoinder affidavit, the respondents have come forward by way of filing supplementary affidavit by repudiating the averments contained in Para 13 of the rejoinder affidavit. It appears that the charge with regard to deficiency of certain items like kit box, hold-all, handbag etc has been framed arbitrarily inasmuch as according to learned

counsel for the Applicant were produced before the Court and deposited accordingly. This having not been repudiated as stated supra, it would transpire that the authorities have not been taken into reckoning that the aforesaid items were produced or deposited in the court.

39. Thus in the above conspectus, the impugned order of dismissal seems to suffer from illegality as stated (supra) and is thus liable to be set aside.

ORDER

40. Accordingly, the O.A is allowed and the impugned order of dismissal dated 19.03.2007, the impugned discharge certificate dated 27.05.2009 and the order rejecting the appeal of the Applicant dated 27.01.2011 are set aside with all consequential benefits. The Applicant shall be permitted to continue in service on the rank, which he was holding at the time of dismissal from service till the age of superannuation and in case the period of service of the rank which the Applicant was holding at the time of dismissal, has already expired, then the Applicant shall be deemed to continue ins ervice of the rank he was holding at the time of dismissal from the service till the age of superannuation of the rank with all consequential benefits. Let the arrears of salary and other consequential benefits be provided to the Applicant expeditiously, say within four months from

today. A copy of the order shall be communicated by the OIC Legal Cell to the authorities concerned forthwith for compliance within the stipulated period.

41. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

MH
Date : February, , 2017