

**(2006) 08 DEL CK 0102**  
**In the Delhi High Court**  
**Case No : WP (C) 4281 of 2001**

Ex. Nk. Mehar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 31-08-2006

**Acts Referred:**

Army Act, 1950 — Section 164  
Army Rules, 1954 — Rule 115(2), 118, 147

**Citation :** (2006) 08 DEL CK 0102

**Hon'ble Judges :** Swatanter Kumar, J;G.S. Sistani, J

**Bench :** Division Bench

**Advocate :** Vinod Kumar, for the Appellant; Maninder Acharya and T. Prashad, Dy. JAG, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Swatanter Kumar, J.—The petitioner was enrolled in the Army on 9.1.1991. After completion of his training, he was posted to different regiments and to different places including hard field stations. He was awarded medals in recognition of his service with the Army. As a result of his hard work, he was promoted to the rank of "Naik" in the year 1996. While the petitioner was serving in 68, Engineer Regiment on 21.10.2000, he was charged with the offence under AA Section 39(a) for absenting without leave from 8.5.2000 to 8.8.2000. He was tried by a summary court martial and the sentence of dismissal from service and four months" rigorous imprisonment was awarded to the petitioner. Because of his good conduct in the imprisonment at Jodhpur, his period of sentence was reduced by one month and the petitioner had already undergone the awarded sentence. According to the petitioner, he had not been given a fair, just and impartial trial, was not afforded adequate opportunity to defend himself, the respondents have violated the provisions of the Act as well as contravened procedural law, thus, vitiated the entire trial. It is also pleaded that the signatures of the petitioner on the summary of evidence were obtained by the respondents by causing a threat of physical harm to the petitioner. The witnesses

were examined at the back of the petitioner without affording him any opportunity to cross-examine the same. According to the allegations made in the petition, he was kept under close arrest during the period from 8.8.2000 to 21.10.2000 illegally and was not brought on trial within the prescribed period. The requisite documents were not supplied to him. Another ground taken by the petitioner is that a proper friend of the accused was not provided to him during the course of trial and the person provided was a very junior officer of the same unit as that of the court and, thus, there was an apparent violation of the contents and spirit of AR 95 and AR 129. Keeping these grounds in mind, the petitioner after his release from the jail, submitted a petition u/s 164 of the Army Act to the Chief of Army Staff on 24.1.2001 on which no action was taken, compelling the petitioner to file CWP 1943 of 2000 which was disposed of by the court vide its order dated 26.3.2001 with a direction to the respondents to pass appropriate orders and liberty was also granted to the petitioner to approach the court, if the need so arises. Vide order dated 6.6.2001, the appeal of the petitioner was rejected by the authorities, resulting in filing of the present petition.

2. The respondents have filed a detailed counter affidavit wherein it is stated that the petitioner was posted from CWE No. 1 Dehradun to 68 Engineer Regiment and TOS on 7.3.2000. He was granted 20 days casual leave on permanent posting by CWE No. 1, Dehradun but he reported to the unit on 14.4.2000 after 18 days of overstayed of leave. The petitioner again left the unit lines on 8.5.2000 and absented himself from unit lines for 91 days before he voluntarily rejoined. The petitioner was a habitual offender and the frequency of occurrence indicated that there was no improvement on the part of the petitioner. The petitioner was brought back to the unit by his brother and village elders on 8.8.2000. This was the conduct of the petitioner within one year which required that the respondents should deal with the same in accordance with law. This resulted in the petitioner being tried by a summary court martial on 21.10.2000 and the petitioner was awarded dismissal from service and four months' rigorous imprisonment in civil prison. The sentence was subsequently reviewed by GOC 11 Inf. Div. and was reduced to three months' rigorous imprisonment. According to the respondents, the summary court martial was conducted in accordance with law and after providing adequate opportunity to the petitioner, the sentence was awarded by the court. It is not disputed that the petition filed by the petitioner on 24.1.2001 has been rejected by the Chief of Army Staff vide their letter dated 7th June, 2001. It is specifically denied that the signatures of the petitioner on the summary of evidence were obtained under threat of physical harm. On the contrary, it is submitted that the summary of evidence was recorded strictly as per rules. The petitioner was fully apprised of his right to get copy of the summary of evidence proceedings conducted under Army Rule 147 which was received by the petitioner on 21 October, 2000 (copy of receipt has been annexed on record as Annexure R-2) and summary of court martial proceedings were also received by him (copy of receipt has been annexed on

record as Annexure R-3).

3. During the course of hearing, the petitioner had pleaded guilty and the court, after complying with the requirements of the relevant provisions, had recorded the plea of guilt in the proceedings held on 21st October, 2000. The relevant part of the court of proceedings reads as under:

#### ARRAIGNMENT

Q. By the court - How say you 1484717N Nk/Clk(GD) Question to Mehar Singh) are you guilty or not guilty of the said accused charge, preferred against you?

Answer Guilty Sd/-

(Rajat Rastogi)

Col

The Court

21 Oct 2000

Q. Are you guilty or/not guilty of the \_\_\_\_\_charge?

Question to accused

#### PLEA OF GUILTY: COMPLIANCE OR AR 115(2)

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

The following procedure was adopted in respect of accused person:

Before recording the plea of guilty offered by the accused, the court explained to the accused the meaning of the charge to which he had pleaded guilty and ascertained that the accused had understood the nature of the charge to which he had pleaded guilty. The Court also informed the accused the general effect of the 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 and the effect of his plea of guilty accepts and records the same. The provisions of Army Rule 115(2), are thus complied with.

Sd/-

(Rajat Rastogi)

Col

The Court

21 Oct 2000

4. After the summary of evidence was read and explained to the accused, on that very day, he was called upon to make a statement if he so desired. The petitioner

chose not to make any statement and after cautioning the accused in terms of Rule 118 of the Army Rules, the verdict of the court was recorded on the plea of guilt awarding the afore-stated punishment to the petitioner.

5. From the original record produced before us, it appears that there is no application or statement made on behalf of the petitioner requiring any documents after recording of summary of evidence. The pleas taken by the accused before the court are without substance inasmuch as he made the plea of guilt on 21st October, 2000 and in the appeal/petition he had raised some grounds with regard to non-supply of summary court martial proceedings for which we have already noticed, there is the receipt duly acknowledging the said documents. Even in the appeal, nothing was stated as to who had given him the alleged physical threat. The plea that the petitioner had pleaded not guilty at the initial stage is certainly an after-thought. Even to a query raised before the court, the learned Counsel appearing for the petitioner was not able to say as to where was the petitioner for a long period of 91 days i.e. from 8.5.2000 to 8.8.2000. In the entire writ petition, there is not even a single justification given in regard to the admitted absence of the petitioner. This was not a case where it would have been difficult for the respondents to prove the case as it was record based. The petitioner has taken the grounds in the present writ petition which are without much substance.

6. Learned Counsel appearing for the respondents while relying upon a judgment of the Supreme Court in the case of Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, contended that where a delinquent admits the charges, pleads guilty and offers no defense, there can be no violation of principles of natural justice or the rules. It is further submitted that the respondents, in any case, have fully complied with the requirements of the rules as is clear from the above recorded proceedings and in complete substantial spirit, they had satisfied the requirements of Army Rules 115(2) and 118 and general principles of law applicable to a case of trial by summary court martial. The reliance has also been placed upon a Division Bench judgment of this Court in the case of Chokha Ram v. UOI and Anr. CW No. 7021/2002, decided on 5th March, 2004 wherein the Bench dealing with somewhat similar situation held that the plea of guilt properly recorded, by itself, can form basis of an order of conviction and held as under:

15. Trial of the petitioner by SSFC was held in the presence of Shri Yash Paul, Assistant Commandant, 19 Bn, appointed as Friend of the petitioner and he was readily available to him for assistance, if he so required. The plea regarding breach of Rule 157 is, in the circumstances, totally unsustainable.

To a faint attempt from the side of the petitioner that "plea of guilty" notwithstanding, the prosecution was otherwise obliged to substantiate the charge by producing all relevant evidence, relying on two decisions of Supreme Court in Kisan Trimbak Kothula and Others Vs. State of Maharashtra, & Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational

Institution Vs. The Educational Appellate Tribunal and Another, , the respondents sought to maintain that in view of plea of guilty on the part of petitioner, there was no necessity of examining any witness to prove the charge against the petitioner. The latter was a case where respondent No. 2, who was appointed as Lecturer in appellant institution, applied for leave for three years for doing Ph.D., which request was, however, not acceded to. Later on, she applied for extraordinary leave for one year for doing M.Phil and she gave an affidavit that she would produce proof of registration in M.Phil course by a particular date, falling which she would joint duty by the given date. The respondent No. 2 did not get herself registered for M.Phil rather she got herself registered for Ph.D. Course. The appellant institution on coming to know of this fact, sent a registered letter to respondent No. 2 to join duty by a particular date but the respondent No. 2 in spite of receipt of letter, did not do so. A notice was sent to her and after considering her reply thereto, her services were terminated. In the facts of that case, the Supreme Court laid down:

...Giving of opportunity is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute requires but this cannot be in a case where allegations and charges are admitted and no possible defense is placed before the authority concerned. What enquiry is to be made when one admits violations? Respondent 2 had admitted that she did not joint M.Phil course. It is also an undisputed fact that she did not report for duty even when she had given an undertaking to do so. In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record, and in spite of opportunity, no worthwhile Explanation is forthcoming; as in the present case it would not be a fit case to interfere with termination order....

17. In the present case, a bare reading of averments in the petition discloses that the petitioner had failed to carry out lawful command of his superior officer, any excuse/explanation notwithstanding and pleaded guilty in his statement during the course of record of evidence and also before the SSFC. It was, in the given situation, not incumbent on the part of the authority holding Summary Security Force Court to require the department to produce evidence to prove the charge against the petitioner.

7. In the present case, the record does not reflect breach of any rules as well as the principles of natural justice. The petitioner was unauthorisedly absent for a long period and it was a repeated performance of indiscipline within an year. Forces are required to maintain discipline and unauthorized absence can hardly be ignored particularly when the petitioner is unable to place on record even now any reasonable Explanation much less a sufficient cause for his unauthorised absence. It was obligatory on the part of the petitioner to raise before the authorities the reason for his absence. Having failed to discharge the onus placed upon him in the case of admitted unauthorised absence, we are unable to accept the contentions raised on behalf of the petitioner. In regard to quantum of

sentence, there is hardly any scope for interference as the petitioner has already undergone the awarded imprisonment which was even reduced by the concerned authorities.

8. For the reasons afore-stated, we find no merit in this petition. The same is dismissed, while leaving the parties to bear their own costs.