

IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,
GUWAHATI

OA (Appeal) 29/2014

P R E S E N T

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE AIR MARSHAL J.N. BURMA, MEMBER (A)

Sri Satish Kumar Shukla

Sepoy No. 134456A

Ex-Rifleman/GD

S/o Ramesh Ch Shukla

R/o village & PO-Dehat

PS-Satti, Dist-Kanpur, Dehat

Uttar Pradesh

..... **Appellant**

Legal practitioner for the appellant

Mr. B.P. Sinha

- Versus -

1. Union of India
Through its Secretary
Govt of India,
Ministry of Defence,
South Block, Raksha Bhawan
New Delhi-110011
2. The Chief of the Army Staff,
Sena Bhawan, Army Head Quarter
New Delhi.
3. The Commandant
13 Assam Rifle
C/O 99 APO

4. The Adjacent Officer
Incharged Document,
13 Assam Rifle, C/O 99 APO

..... **Respondents**
Legal practitioner for the
Respondents
Mr. N. Baruah, CGSC

Date of Hearing : 16.06.2016
Date of Judgment & Order : 16.06.2016

JUDGMENT & ORDER
(ORAL)

(By B.P. Katakey ,J)

1. This appeal is directed against the order dated 13.07.2001 passed in Summary Court Martial (in short SCM) dismissing the appellant from service on the basis of the plea of guilty.
2. The appellant was granted leave up to 14.05.2000. Having not reported for duty from 15.05.2000, a Court of Inquiry was conducted wherein he was declared as a deserter w.e.f. 15.05.2000 and consequently he was struck off from the unit strength. After the appellant reported for duty on 23.12.2000, he was charged under Section 39(b) of the Army Act, 1950, for overstaying the leave granted to him without sufficient cause. The appellant was then tried by the SCM, wherein he was sentenced to be dismissed from service vide order dated 13.07.2001. The appellant, thereafter, approached the Hon'ble Allahabad High Court in Writ Petition No.39953 of 2001 challenging the said order, which Writ Petition, however, was dismissed on 12.03.2014 on the ground that the Hon'ble Allahabad High Court has no jurisdiction to entertain the same. The appellant, thereafter, filed the present OA challenging the order dated 13.07.2001 dismissing him from service.

3. We have heard Mr. B.P. Sinha, learned counsel appearing for the appellant and Mr. N. Baruah, learned CGSC appearing for the respondents.

4. It has been contended by the learned counsel for the appellant that he has been found guilty and dismissed from service vide order dated 13.07.2001 based on the alleged plea of guilty by the appellant, which was recorded without following mandatory requirements of Rule 115 of Army Rules 1954 and hence the findings of the SCM dated 13.07.2001 as well as the sentence imposed by it need to be interfered with.

5. Per contra, learned counsel appearing for the respondents submits that there is no infraction of provision of Rule 115 of the Army Rules 1954 and hence the contention of the appellant that the order of SCM dated 13.07.2001 needs to be interfered with, cannot be sustained in law.

6. We have considered the submissions advanced by the learned counsel for the parties and also perused the pleadings apart from the records of the SCM produced by Mr. N. Baruah, learned CGSC appearing for the respondents.

7. The appellant in the OA has pleaded that he never pleaded guilty and that there was infraction of the provision of Rule 115 of the Army Rules 1954. The respondents in their counter affidavit filed have denied such contention. To appreciate the rival contentions, we have perused the original records of the SCM wherefrom it appears that the alleged plea of guilty was recorded in the SCM at the time of arraignment without a mention of any date. The records further reveal that one part of an extra sheet, mentioned as Annexure-II page No. 262, has been pasted subsequently on the page containing the said plea of guilty to demonstrate that the provision of Rule 115 (2) of the Army Rules, 1954 has been followed.

8. For better appreciation, the contents of page B of the SCM proceeding containing the plea of guilty of the appellant is reproduced below *in verbatim*:

"B

The charge sheet is read (translated) and explained to the accused marked "B-2" signed by the court and attached to the proceedings.

Instructions:- The sanction of Superior authority for trial by Summary Court Martial should be entered with the date and the signature of the Officer at the foot of the charge sheet, when sanction is necessary (See Army Act Section 120(2))

ARRAIGNMENT

Q.1 Question to
the accused
by the court

How say you No. 134456A Rifleman/GD
Satish Kumar Sukla are guilty or not guilty
the charge under Army Act Section 39(b)
preferred against you?

Q.1 Answer by the accused

Guilty

Sd/-
(Signature of the accused)

* The accused having pleaded guilty to any charge(s), the provisions of Army Rule 115(2) must be complied with and fact of this has been recorded.

Sd/-
(Signature)
Accused

Sd/-
(Signature)
The Court

9. The contents of the sheet which is pasted in the aforesaid page-B of the SCM proceeding are also reproduced below *in verbatim*:

"ANNEXURE-II 262

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

Sd/-
(HV Sharma)
Colonel
Commandant
13 Assam Rifles

Sd/-
Signature by accused
Dated 13 Jul 2001"

10. Rule 115(2A) of the Army Rules 1954 requires that where an accused pleads guilty, such plea and the factum of compliance of Sub-rule 2 of the said Rule must be recorded by the Court in the manner provided therein. The provision of the said Rule is mandatory and hence the authority is bound to comply with the same.

11. In the instant case, as it appears from the original records of the SCM, page-B of the said record does not contain any note relating to the compliance of Rule 115(2), which, however, has been pasted subsequently in page-B of the said records apparently is an attempt to show that the said provision has been complied with. That apart, the photocopy of the SCM proceeding which has been supplied to the appellant was so prepared so as to give an impression that the provision of Rule 115(2) of the Army Rules 1954 has been complied with and contents of sheet pasted was a part of the page-B of the original SCM proceeding. We fail to understand as to how the respondent authorities can bring something apparently recorded elsewhere and paste the same in the SCM proceeding just to show the compliance of Rule 115(2) of the Army Rules, 1954. The respondents could not offer any satisfactory explanation for the apparent manipulation of the records by pasting the aforesaid Annexure-II in page-B of the SCM proceeding.

12. We noticed that no reference to any Appendix or main correspondence has been made in Annexure-II. We also noticed that the entire SCM proceedings have an annotation as Annexure-I which is a clear indicator that Annexure-II was created after Annexure-I which leads us to believe that it has been done as an afterthought. Therefore, the appellant did not get an opportunity to put across his reasons for the offence of absent without leave.

13. In view of the aforesaid position, we are of the view that the statutory requirement of Rule 115(2) of the Army Rules 1954 has not been followed in letter and spirit and hence the finding of the SCM as well as the sentence imposed by it vide order dated 13.07.2001 cannot be sustained in law. The said finding and the sentence of dismissal from service are, therefore, set aside.

14. The appellant shall be reinstated in service. However, he shall not be entitled to any back wages on the principle of "no work -no pay". The period from the date of dismissal till date shall, however, be counted for the purpose of pension. Needless to say that the appellant shall be entitled to salary from the day he joins duty.

15. The OA is accordingly allowed to the extent indicated above. No costs.

MEMBER (A)

MEMBER (J)

Kalita