

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
GUWAHATI**

**T.A. NO. 31/2010**

**(Arising out of Writ Petition (C) No. 7700/2005**

**P R E S E N T**

**HON'BLE MR. JUSTICE C.Y. SOMAYAJULU, Member (J)  
HON'BLE CMDE MOHAN PHADKE (Retd), Member (A)**

Sri Manudhar Rajgarh (Havaladar)  
Permanent resident of Village  
Baruah Changmal,  
P.O. – Dehajan (Dimou)  
District – Sibsagar (Assam)

**...Applicant**

- Versus-

1. The Union of India,  
Represented by Secretary,  
Ministry Of Defence,  
South Block, New Delhi-110011.
2. Chief of the Army Staff  
(Represented by Adjutant General)  
Sena Bhawan, New Delhi-110011
3. The General Officer Commanding-in-Chief,  
HQ Eastern Command,  
Fort William, Kolkata – 700021
4. Col R S Rana, Colonel, Commandant,  
58 Gorkha Training Centre,  
Assam Regimental Centre, Station Shillong – 7 (Meghalaya)

5. IC-39745K Lt Col Ashokan K. Adjutant 58 GTC, Assam Regimental Centre, Station Shillong – 7 (Meghalaya)
6. JC-205815P Sub Maj Del Bahadur Gurung, Centre Sub Maj, Assam Regimental Centre Station Shillong – 7 (Meghalaya)

**...Respondents**

**Legal practitioners for Applicant (s)**

**Mr. S. Dutta**

**Respondent (s)**

**Mr. S Bhattacharjee, CGSC**

Date of Hearing : 04.11.2010 & 10.11.2010

Date of Judgment & Order : 16th December, 2010

**JUDGMENT & ORDER**

**[By Cmde Mohan Phadke]**

Ex Havaldar (Nursing Assistant) Manudhar Rajgarh was tried by Summary Court Martial whilst serving in Assam Regimental Centre (ARC) and attached with 58 Gorkha Training Centre (58 GTC) in the year 2003 and sentenced to be dismissed from service. Aggrieved by the findings and sentence of the Summary Court Martial he filed Writ Petition No. 7700/ 2005 in the Gauhati High Court at Guwahati. The said writ petition was transferred to this Tribunal for adjudication on its establishment and was marked as TA-31/10.

2. Facts relevant to the trial and dismissal of the applicant are that in the year 2003 a Recruitment Rally was held in the Assam Regimental Centre from 25<sup>th</sup> to 29<sup>th</sup> November 2003. The applicant, who was at the material time performing the duties of Nursing Assistant in the Assam Regimental Centre and attached to 58 Gorkha Training Centre, was detailed to assist the Medical Examiner in carrying out medical tests of candidates. On 29 -11- 03 a search of the belongings of the applicant was ordered by CO, Administrative Battalion. As per the statement in para 3 of the Writ Petition the search led to the recovery of Rs. 36,000/- (Rs.30,000/- from the applicant's bag and Rs.6,000/- from clothing items kept on a hanger). A further sum kept in an envelope in the lower shelf of a cupboard in the Medical Inspection (MI) Room of ARC was found by the Ayah Ms Poornima Nath and handed over to Lt Col Miss P Mehra who in turn handed it over to Lt Col CS Unni. Col. RS Rana, Deputy Commandant of 58 Gorkha Training Centre, then ordered the recording of Summary of Evidence against the accused.

3. On completion of investigation the accused, Havaldar (Nursing Assistant) Manudhar Rajgarh was given due notice of his trial by the Summary Court Martial and given a copy of the Charge Sheet, Summary of Evidence and additional summary of evidence. He was informed that IC 53581K Major Dharmesh Chandra would be the

'Friend of the accused' and asked to state objection, if any, that he may have. This was done vide the letter entitled, 'Warning For Trial' which is at Annexure 23 (page 70) of the writ petition.

4. The Charge Sheet which is produced by the applicant (Petitioner) at Annexure 24 (Page 71) of the writ petition contains three charges – all under section 53(b) of the Army Act – which allege exacting, without authority, of money by the applicant from different persons as mentioned in the Charge Sheet. The charges read as follows: -

"The accused, No 13959903L Havaladar (Nursing Assistant) Manudhar Rajgarh of Assam Regimental Centre attached with 58 Gorkha Training Centre, is charged with" :-

**First Charge**  
**Army Act**  
**Section 53(b)**

**EXACTING WITHOUT PROPER**  
**AUTHORITY MONEY FROM A**  
**PERSON**

In that he,  
at Shillong, on or about 25/26 November, 2003, while performing duties of Nursing Assistant in Assam Regimental Centre, exacted without proper authority, Rs 5000/- (Rupees five thousand only) from Smt Dimjathing, wife of No 4352507N Hav Thangkholet Kuki of the same Regimental Centre.

**Second Charge**  
**Army Act**  
**Section 53(b)**

**EXACTING WITHOUT PROPER**  
**AUTHORITY MONEY FROM A**  
**PERSON**

In that he,  
at Shillong, on 26 November, 2003, while performing duties of Nursing Assistant in Assam Regimental Centre, exacted without proper authority, Rs 4000/- (Rupees four thousand only) from No 14599787 Cfn/VM(MV) K Thirupathi of the same Regimental Centre.

**Third Charge**  
**Army Act**  
**Section 53 (b)**

**EXACTING WITHOUT PROPER**  
**AUTHORITY MONEY FROM**  
**A PERSON**

In that he,  
 at Shillong, on 27 November, 2003, while performing duties of  
 Nursing Assistant in Assam Regimental Centre, exacted without  
 proper authority, Rs 15,000/- (Rupees fifteen thousand only)  
 from Shri Nokzapati Paite, a civilian.

Section 53 of the Army Act, under which the charges are  
 framed is also reproduced below:-

**“53. Extortion and corruption.**- Any person subject to this Act  
 who commits any of the following offences, that is to say,-

- (a) commits extortion; or
- (b) without proper authority exacts from any  
 person money, provisions or service,

shall, on conviction by court-martial, be liable to suffer  
 imprisonment for a term which may extend to ten years or such  
 less punishment as is in this Act mentioned.”

5. After the Court was duly constituted, as shown in page 73 of  
 the writ petition, the charges were read (translated) and explained to  
 the accused(This fact is recorded in the trial proceedings) and he  
 pleaded guilty to all the three charges.

6. The plea of ‘guilty’ as recorded in the trial proceedings is in  
 conformity with Rule 121(1) of the Army Rules, 1954. This rule reads,

“121. **Form and record of finding**-(1) The finding on every charge upon  
 which the accused is arraigned shall be recorded, and except as

mentioned in these rules, such finding shall be recorded simply as a finding of "Guilty", or of "Not Guilty".

7. The certificate recorded in the proceedings (at page 74 of the writ petition) shows that the meaning of the charges was duly explained to him and it was ascertained from him that he understood the nature of the charges and the difference in procedure that would follow as a consequence of his pleading guilty. The said certificate which records full compliance with the provisions of Rule 115(2) is reproduced below:-

"Before recording the plea of "Guilty" of the accused the court explained to the accused the meaning of the charge(s) to which he had pleaded "Guilty" and ascertained that the accused had understood the nature of the charge(s) 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(s) and the effect of his plea of "Guilty", accepts and records the same. The provisions of rule 115(2) are thus complied with."

8. Perusal of page 76 of the writ petition shows that the accused was, thereafter, asked if he wished to make any statement in reference to the charge or in mitigation of punishment, but he 'Declined to make any statement'. Annexure 26 (page 84) of the writ petition then shows that the accused was sentenced to 'be dismissed from the service'. It is evidenced from Annexure 27 (page 85) of the writ petition that he was supplied with a complete set of

proceedings of the Court Martial which tried him along with all exhibits in terms of AO 51/87.

9. Annexure 28(page 86) records the circumstances relating to the award of sentence to him and finally Annexure 29(page 87) of the writ petition shows that he was duly informed of the right to petition the higher authorities namely the Central Government, the Chief of the Army Staff etc. in the event of his being aggrieved by the findings or sentence of the Summary Court Martial.

10. It would be relevant, in the above context, to examine the evidence that the Summary Court Martial had before it with reference to the charges in question.

11. Perusal of the trial proceedings shows that a total of nine witnesses were examined. The evidence of Hav Thangkholet Kuki of Administrative Battalion, Assam Regimental Centre with regard to the first charge which alleged exacting, without proper authority of a sum of Rs 5000/- (Rupees five thousand only) by the accused from Smt Dimjathing, wife of No 4352507N, Hav Thangkholet Kuki of the same Regimental Centre was recorded on 23-02-2004 as the first witness. This witness deposed to the effect that Master Limjathong Kuki, his wife's brother, who was staying with them, had participated

in the recruitment rally held in Assam Regimental Centre from 25<sup>th</sup> to 29<sup>th</sup> November 2003 and had passed the physical test. He, therefore, went to the MI Room along with his wife. As the front door of the MI Room was closed they went to the rear of the MI Room where he waited in the verandah whilst his wife went inside to meet Hav Manudhar Rajgarh who was sitting on the charpoy in civil dress. His wife placed Rs 5000/- in the denomination of Rs 500/- on the top of the almirah and came back immediately after requesting him to make her brother fit in the medical examination. When his wife told him this he was furious. It is pertinent to note that the accused had declined to cross examine the witness and therefore the statement of this witness has gone uncontroverted.

12. Similarly K Thiruppathi (No 14599787Y Cfn/VM(MV) of Administrative Battalion, Assam Regimental Centre who was examined on 28-02-2004 with reference to the second charge, has stated that he was posted in the MT pl of Assam Regimental Centre and working as Vehicle Mechanic since July 2000. He came to know of the recruitment rally that was to be held to be from 25<sup>th</sup> to 29<sup>th</sup> November 2003 from the Routine Order. At the same time Naik K. K. Thang of MT pl approached him on 25-11-2003 and requested his help for enrolling two of his candidates (his relatives) who had passed the physical test during the rally in the morning. He further

asked him to request the Doctor to make them physically fit. He however, told him that he cannot speak to the Doctor but will speak to Hav/NA Manudhar Rajgarh for help. Accordingly, on 26-11-2003 he went to the MI Room and gave the chest numbers KU-51 and MZ-17 of the candidates and returned after requesting him to help. Subsequently when he checked with Hav/NA Manudhar Rajgarh he confirmed from a list that both the candidates had cleared the medical test. When he informed Naik K.K. Thang of this he gave him Rs 4000/- (in hundred rupees notes) and asked him to give the money (Rs 2000/- per candidate) to Hav/NA Manudhar Rajgarh. He accordingly went and handed over the money to Hav/NA Manudhar Rajgarh at about 0610 hours. This witness also said that Manudhar Rajgarh had never asked for any money at any time. It is noteworthy that the accused Hav/NA Manudhar Rajgarh had declined to cross examine this witness also.

13. On examination of, *inter alia*, the above witnesses the accused made a statement, after he was duly cautioned, to the effect that he was not obliged to say anything unless he wished to, but whatever he says would be taken down in writing and given in evidence. This statement, which is shown to have been signed by the accused Hav/NA Manudhar Rajgarh on 03 March, 2004 and witnessed by Sub

Maj Sahabir Thapa, as independent witness is reproduced at pages 39 to 42 of the Writ Petition.

14. In this statement the accused has accepted to having taken
- (a) Rs 15000/- (Rupees fifteen thousand only) kept in an envelope which had a photo and words INSTANT I written on top of the envelope from the lady accompanying Mr Nokzapau Paite. This was for helping them in getting their son Nengsuanlian Paite recruited.
  - (b) Rs 4000/- (Rupees four thousand only) from Cfn / MV) K Thiruppathi
  - (c) Rs 5000/- (Rupees five thousand only) from Havaldar Zaounkholam Kuki who was in charge of Box factory in ARC.
15. In addition, he has also accepted the recovery of the following sums of money from his personal belongings:-
- (a) Rs 30,000/- (Rupees thirty thousand only) from his bag + Rs 6000/- (Rupees one thousand only) from the pocket of his clothing on hangar.
  - (b) Money given by the lady (does not specify the amount) which he says was kept in another room (Poly Clinic) in the lower shelf of the cupboard which was recovered by Ayah Mrs. Poornima Nathand handed over to the lady doctor Mrs. P Mehra, who in turn handed over to Lt Col AR Pandey, the Recruitment Medical Officer of the Assam Regimental Centre.

(c) Another white envelope containing Rs 5000/- (Rupees five thousand only) which was recovered from an almirah in his room in which instruments were kept.

(d) Rs.500/- to Rs.3000/- from a few others but he does not remember their names.

16. Subsequently, additional summary of evidence was recorded in May 2004. At this time Mr Nokzapau Paite, retired Head Constable of Manipur Civil Police was recorded. He deposed to the effect that commanding Officer of 42 Rashtriya Rifles had informed him that his second son could be enrolled in Assam Regiment as an "Instant enrolment" as his first son Late Hav Chinzapau Paite of 7<sup>th</sup> Assam had expired on 27 November 2003 while he was posted in 42 Rashtriya Rifles and fighting militants in J & K and was thus considered to be a 'Battle Casualty'. He accordingly came 'to Shillong and stayed with Ex Subedar Chinzasiam who is his brother-in-law. His son had earlier been examined by RMO on 12<sup>th</sup> November, 2003 and found to be permanently unfit for enrolment on account of defect in distant vision, flat foot, cardio murmur, hyper hydrosis and CSOM both ears. He, therefore, discussed the matter with Subedar Chinzasiam and his sister-in-law Smt Muanching and decided to meet the Nursing Assistant to find a solution to this problem. Accordingly, he alongwith his sister-in-law Smt Muanching went to the M.I.Room

at about 1600 hours on 27<sup>th</sup> November, 2003. The Nursing Assistant was sleeping in a civil dress. He asked him to help his son in the medical. The Nursing Assistant then told him that he will provide all help provided he is given Rs.15,000/-, out of which Rs.10,000/- was required to be given to the doctor and the balance of rupees was for him. He stated that this would be returned in case the candidate failed. He also added that the Nursing Assistant said that the filling of all documents is done by him and the doctor only signs thereon.

17. The witness further deposed that the Nursing Assistant had told him that since the doctor knew Mr.Nengsuanlian Paite an imposter is required to replace him during the medical. He accordingly asked for both the candidates to be brought in the morning to his room and said that he will replace the photo of the candidate in the Recruitment Inspection Card (RIC). He accordingly paid Rs.15,000/- to Hav(NA) Manudhar Rajgarh in a brown envelope on the same day. The notes were in the denomination of Rs.500/-. On the envelope he wrote Rs.15,000/- and 'Stand'. The Nursing Assistant kept the money under his mattress. After giving the money they left Chinzasiam's home. On the next morning his sister-in-law took his son and the imposter to the Nursing Assistant who took them alongwith him for the medical. He waited outside and came to know that his son had passed the medical. He then returned to the

house of Subedar Chinzasiam. On the next day he learnt that there was some problem with the documentation and the Nursing Assistant had been caught and the money recovered. He was told by the Adm Bn CO that he would have to stay for some time for recording the statement during the enquiry. He accordingly left for home after 18<sup>th</sup> December, 2003 after giving his statement. This witness was cross-examined by the accused Hav(NA) Manudhar Rajgarh. During the cross-examination the witness confirmed in answer to Question No.2 "Yes , Hav(NA) Manudhar Rajgarh asked for Rs.15,000/- in the room during the discussion". In answer to Question No.6 he said, "I gave the money because of the trust Smt Muanching had in the Nursing Assistant". In answer to Question No.9 he further deposed, "The NA, Hav(NA) Manudhar Rajgarh told me that the doctor had identified your son, so you will have to have on imposter to do the medical instead of Nengsuanlian Paite." In answer to Question No.10 he said, "Nobody told me, but I thought that probably the doctor will listen to the Nursing Assistant. So I gave the money to the Nursing Assistant."

18. The other evidence on record also corroborates the evidence, as discussed above, of the three main witnesses. For example, Lt.Col Sudhendra Singh, GSO (1) of Assam Regimental Centre. Who was the Recruiting Officer for Unit Headquarter Quota

(UHQ) enrolment as confirmed that he had called Mr.Nengsuanlian Paite to report to Assam Regimental Centre for medical check up after receiving an application from his father and having it verified from the records, Assam Regiment, about his eligibility. The candidate, (brother) of No.8031230 M Late Hav Chinzasiam, a battle casualty, was, however, declared permanently unfit on medical grounds on 12<sup>th</sup> November, 2003. He was nevertheless, once again called as a test case on account of receipt of some anonymous complaints about gratification during medical examination. Mr.Nengsuanlian Paite accordingly reported to the recording rally on 27<sup>th</sup> November, 2003 and Recruitment Master Data Sheet Part I & Part IV(RIC) was accordingly prepared and handed over to Hav. Manudhar Rajgarh, the Nursing Assistant, who signed and collected the said documents.

19. On Completion of medical when the said document was received back by the Dealing Clerk he (witness) found that the photograph of the individual had been changed. He accordingly instructed the Recruiting Clerk to summon the individual. On being asked the candidate disclosed that the photograph was changed by Hav(Nursing Assistant) Manudhar Rajgarh and that he had taken Rs.15,000/- for doing it. During the course of examination Lt. Col

Sudhendra Singh re-confirmed his being told by the imposter that the photo was changed by Hav Manudhar Rajgarh.

20. Lt.Col A.K.Pandey, Recruiting Medical Officer Assam Regimental Centre has further confirmed that he was detailed to carry out the medical of candidates during the recruitment rally held from 25-29 November, 2003. He carried out the medical of the last batch in Rajeev Gym of Assam Regimental Centre. RICs of the last batch were handed over to him on 28<sup>th</sup> November, 2003 by Hav N.A Manudhar Rajgarh. This witness was cross-examined by the accused only with reference to changing of photograph and he said that it was not done in his presence.

21. Mrs.Poornima Nath Ayah(civilian) of Papa Pandey Clinic, MI Room of Assam Regimental Centre has deposed that at about 1245 hours when she opened the cupboard in Dr.(Mrs) P.N.Mehra's room to take out stationary she found that the bottom shelf was not in order and decided to re-arrange the cupboard. While doing this she found an envelope and, on opening it, found that there was a bundle of Rs.500/- notes. She immediately informed Dr.Mehra who was sitting and carrying out medical examination in the same room. Dr.Mehra asked her to keep the envelope back in the same place and reported the matter to RMO Lt.Col Pandey. Dr.Mehra returned with

RMO who instructed that money be handed over to Lt.Col C.S.Unni, Administrative Battalion Commander. This witness was not cross-examined by the accused and thus her statement has gone uncontroverted.

22. Hav Clerk Patil Shivaji Himmatrao who was examined as the 4<sup>th</sup> witness on 28<sup>th</sup> May, 2004 has confirmed that he had informed the Recruiting Officer about Mr.Nengsuanlian Paite being earlier rejected on medical ground but was told to let the individual to attend medical examination for his satisfaction. He had then filled in the Recruiting Master Data Sheet (RMDS) form and stamped and affixed the photo of Mr.Nengsuanlian Paite. The Recruiting Officer had checked and signed the documents. He had then handed over the RMDS form and nominal role to Hav N.A.Manudhar Rajgarh. In the evening when the documents were handed over to him (he does not recollect by whom) they were checked by the Recruiting Officer and he found that the photo Mr.Nengsuanlian Paite appeared to have been tampered with. He then asked for the candidate to be called. The candidate accordingly came and met the Recruiting Officer. In the cross examination the witness was asked as to who changed the photograph and when as, the documents had not been handed over to him, the witness stated that he had no idea as to who had changed the photograph.

23. On conclusion of examination of the last witness when the accused was once again cautioned and asked as to whether he wished to make any statement he made a statement on 28<sup>th</sup> May, 2004 in which he now denied his involvement in changing the photograph.

24. It would thus be evident that the evidence on record clearly establishes the case as alleged in the impugned charges. The petitioner, in his petition, has prayed for *"setting aside and quashing of the impugned conviction and sentence passed by the Summary Court Martial whereby service of the petitioner is dismissed vide Memo under Army Order 309/73 dated 14.03.2005 ..."*. He further prayed for reinstatement with all back wages and other service benefits.

25. The petitioner has contended that the Summary Court Martial proceedings suffered from serious illegality and irregularity and were thus liable to be set aside. He cited undue delay in initiating and completing the trial as the first reason for quashing the proceedings as he claims that he has a right to speedy trial. In this context, he has stated that the recording of summary of evidence

commenced on 28<sup>th</sup> February, 2004 and ended on 28<sup>th</sup> May, 2005. The inordinate delay of 385 days in completing the whole Court Martial Proceeding including recording of summary of evidence, has vitiated the trial, which, according to him, is in violation of Rule 24(2) of the Army Rules. Rule 24 of the Army Rules, 1954, which is cited by the petitioner, is reproduced below:

**“Rule 24(2)** If the accused is remanded for trial by a court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case may require.”

26. Perusal of Rule 24 shows that on completion of the summary of evidence and in event of accused being remanded – as envisaged in Rule 24(2) that *“the Commanding officer shall without unnecessary delay either assemble a summary court martial or apply to proper military authority and convene court martial, as the case may be”*. In the present case, the last summary of evidence was recorded on 28<sup>th</sup> May, 2004 and his Summary Court Martial commenced on 14<sup>th</sup> March, 2005. The explanation offered by the Respondents with reference to this delay is that the time taken was due to the necessity of recording the statements of all relevant witnesses, and also grant of leave to the petitioner as per his entitlement, at his request. The Respondents have further contended

that this has not caused any serious disadvantage to the petitioner. The explanation offered by the Respondents has to be accepted as the Petitioner has not brought anything on record to the contrary.

27. The petitioner, has, next contended that the Summary Court Martial proceedings have violated the mandatory provisions of Section 130 of the Army Act. In support of this contention the petitioner has cited the decision of the Hon'ble Supreme Court in (1982) 3 SCC page 140 wherein the Hon'ble Supreme Court had, *inter alia*, examined the question of constitution of Court Martial with reference to Section 130 in Army Rule 44.

28. Section 130 of the Army Act reads as follows:-

**“Section 130 . Challenges.**-(1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every

officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial."

29. It may be seen that this Section relates to objection, if any, to the Presiding Officer and Members of the Court Martial. This objection is misconceived as section 130 of the Act is not applicable to Summary Court Martial as summary court martial does not have "Members" as in General Court Martial. This is evident from the fact that this Section is contained in Chapter XI of the Army Act which starts with Section 128 which reads " *At every **general, district or summary general court martial** the senior member shall be the presiding officer*"(emphasis supplied)." Section 129 provides that all such trials are to be attended by a Judge Advocate. Section 130, which follows talks about challenge to the appointment of presiding officer and members at all trials by general, district or summary general court martial. There is no mention of Summary Court Martial, which is the mode of trial adopted in the present case. A summary Court Martial is governed by Section 116 of the Army Act, which reads as follows:-

**"Section 116. Summary court-martial.-** (1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed."

30. It would be evident from the above that the Commanding Officer of any Corp, Department or detachment of the regular army, shall alone constitute the Court. Further proceedings are required to be attended by two other persons, who shall be officers or junior commissioned officers or one of either. This provision has been fully complied with in the present case. There is no objection envisaged in the act or the Rules to the Commanding Officer. That being so, the contention taken by the petitioner is considered to be misconceived and untenable.

31. One other reason, cited by the petitioner, for objecting to the Presiding Officer was that Col R.H. Rana amongst others had sent some chits to him with regard to the medical of certain candidates. There is, however, no merit in this contention. The petitioner has not produced anything on record to substantiate this contention or to show its relevance to the trial proceedings of his case. In para-53 of the petition, the petitioner has accepted that he has not been able to show bias on the part of Col R.H.Rana or Sub Maj Dal Bahadur Gurung, but claims "*... in the fair trial there must not be any scope for suspicion about the purity of the members of the Court and their way of administering justice, which alone can safeguard fair play and the interest of justice.*" He then went on to

say that public policy was thrown to the winds in conducting his trial and, therefore, the proceedings are liable to be set aside. The case cited by the petitioner to support this contention does not help his case as the decision of the Hon'ble Supreme Court relates to Section 130 of the Army Act which has no application to the facts and circumstances of the present case. It is thus obvious that this contention has been raised just for the sake of it. This contention is, consequently not tenable for the reasons already explained.

32. The petitioner's next contention is that the acceptance of his plea of guilty by the Summary Court Martial was totally against the spirit of the provisions of Rule 115 of the Army Rules, 1954 and, therefore, his pleading guilty does not have any legal value and ought to have been set aside and quashed. In this regard the petitioner has cited the following cases :-

1. **Mahant Kaushalya Das v State of Madras (AIR 1966 SC 22) &**
2. **Uma Shankar Pathak V. Union of India (1989 (3) SLR 405)**

Rule 115 of the Army Rules, 1954 is extracted below:-

**"115.General plea of "Guilty" or "Not Guilty".-** (1) The accused person's plea – "Guilty" or "Not Guilty" (or if he refuses to plead, or does not plead intelligible 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 summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

1[2A) Where an accused pleads "Guilty", such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner :-

"Before recording the plea of "Guilty" of the accused the court explained to the accused the meaning of the charge(s) to which he had pleaded "Guilty" and ascertained that the accused had understood the nature of the charge(s) 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(s) and the effect of his plea of "Guilty", accepts and records the same. The provisions of rule 115(2) are thus complied with.]

(3) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

33. Mahant Kaushalya Das case (supra), relied on by the learned counsel for the petitioner, arose under Madras Prohibition Act, 1937 filed before a Judicial Magistrate. The procedure for trial of cases before a Judicial Magistrate, is different from the procedure to be followed before a Summary Court Martial. Recording of the plea of 'guilty' or 'not guilty' in a Summary Court Martial proceeding is governed by Rule 115 of the Army Rules and not by the Criminal Procedure Code. So, the said decision relied on by the learned counsel for the petitioner has no relevance in the present case. In Uma Shankar Pathak (supra), relied on by the learned counsel for the petitioner, it was held that –

"12. ... A bald certificate by the Commanding Officer that "the provisions Army Rule 115(2) are here complied with" is not enough. As the note quoted above and underlined by us would bear what is expected of the court where the accused pleads guilty to any charge is that the record of proceedings itself must explicitly state that the court had fully explained to the accused the nature and meaning of the charge and made him aware of the difference in procedure. The instructions to the Court printed on the proforma quoted in Annexure-1 (copy of the impugned order) stating that "question to the accused and his answers both will be recorded verbatim as far as possible" make this amply clear.

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 Rules 115(2) are here complied with".

The facts in that case are different from the facts in this case. In this case, as stated in para 7 above, the certificate appended to the recording of plea of 'guilty' shows that the provision of Rule 115(2) of the Army Rules are fully complied with. So, the said decision is of no help in deciding this case.

34. The learned Central Government Standing Counsel, has relied on **Bhagaban Talukdar v Union of India & Ors, (Mil L. J. 2002 Gauhati 159)** and **K.G. Subramani v Union of India & Ors., (Mil L.J. 2002 Madrass 182)**, where compliance with Rule 115(2) of the Army Rules, 1954 came up for consideration. In Bhagaban Talukdar's case, relied on by the learned CGSC, the learned Judge observed-

"In the very nature of things, the recording made in the course of the proceedings of the Court Martial in compliance with the provisions of Rule 115(2) cannot be put in any strait-jacket formula. What is important is not the language used but the substance of the matter. The charged officer had held the post of a skilled worker (Mechanic) in the army establishment. The Presiding Officer of the Court Martial in his endorsement, as reproduced in the earlier part of the present judgment, had categorically recorded that the charge to which he had pleaded guilty had been explained to him and that the Presiding Officer had ascertained that the accused had understood the nature of the charge. The Presiding Officer had further recorded that he had explained to the charged officer the general effect of the plea of guilt being recorded to the satisfaction of the Presiding Officer that the accused understood the charge and the possible consequences of plea of guilt being recorded is also mentioned. In such a situation, it would be difficult for the Writ Court in exercise of its limited jurisdiction of overseeing the fairness of procedure adopted to conclude that in the instant case, there has been any infraction of Rule 115(2) of the Army Rules, 1954. The language used while recording the satisfaction, mandatorily required under the provisions of Rule 115(2), in the considered view of the Court,

is of no significance and on consideration of the records as produced in original, this Court is inclined to take the view that in the facts of the present case, the provisions of Rule 115(2) have been fully complied with by the authority."

In K.G.Subramani's case, relied on by the learned CGSC, the learned Judge observed-

"10. Coming to the second contention as to the non-compliance of the provisions of 115(2) of Army Act, 1950, as per the said rule, if the accused person pleads guilty and the said pleas are recorded as the finding of the Court, before they are recorded the Court shall ascertain as to whether the accused had understood the nature of the charges to which he has pleaded guilty and shall inform the accused the general effect of the 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 or otherwise that the accused ought to plead not guilty. In the summary trial proceedings, after the petitioners pleaded guilty, the following statements were recorded by the Court.

"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 has 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(s) and the effect of his plea of guilty accepts and records the same. The provisions of the Army Rule 115(2) are complied with."

11. From the above statement it is clear that the Court has followed the Rule 115(2) of the Rules. Only in the event of non-compliance of the said rule the judgements relied upon by the petitioners would be made applicable to the present case. In both the cases the Courts have come to the conclusion that there was non-compliance of the provisions of 115(2) of the Army Rules 1954 and hence, the Courts held that non-compliance of the said rules vitiates the trial. However, in the present case, as stated above, there was every compliance of the Rule 115(2) of the Army Rules and therefore, I do not find any justification in the said submission of the learned Counsel for the petitioner that Rule 115(2) was not complied with."

35. The learned counsel for the petitioner contended that in order to comply with Rule 115 the following procedure has to be followed.

- "1. If the explanation has been done by way of a translation to a language the accused understands, then the translation itself should be recorded in the vernacular script itself and should be recorded in the record of the trial proceedings itself.
2. After that, the accused should be asked a question whether he had understood the explanation as aforesaid or not. That question should also be asked in the language he understands and should also be recorded in verbatim in the vernacular script itself.
3. Then the accused should be asked to write down his answer in his own handwriting and in the same vernacular script of the language he understands.
4. Then the said answer should be attested by the accused person by confirming the answer to be in his own handwriting and thereafter putting his signature below his answer.
  
5. Then the same procedure should be followed while explaining the individual charges to the accused person whereby the accused will confirm his understanding of the individual charges in his own handwriting and by putting his signature below each such confirmation.

6. The plea of guilty or not guilty should also be recorded in the accused's own handwriting by asking him to write down his plea in the language he understands just next to the translated charges. The same should immediately be attested by him by putting his signature to his plea.

This way not a single iota of doubt would remain as to whether the accused has fully understood the nature and implication of pleading guilty to the charge. The higher authority or the confirming authority examining the matter on judicial review can also come to a steadfast conclusion that the accused has in fact understood the legal provisions of Rule 115(2). These suggestions are in view of the fact that the record of the trial proceeding has to be contemporaneous in nature which requires that both the parties i.e. Prosecutor and the Accused should be all throughout aware and confident of the minutest details that has taken place in the trial. Therefore, instead of the prosecutor certifying his own actions by giving a bald certificate as has been done in the present case the above mentioned measures would bring in a thorough and full transparency in the trial proceedings whereby none of parties will be left at dark as to what is going on in the trial."

36. The said measures are not contemplated by Rule 115 of the Rules. It is for the Respondents may consider the suggestions and if they find them acceptable, they may take steps as necessary in consultation with the legal department for future cases. In this case, the certificate recorded by the Court is considered sufficient compliance with Rule 115(2). This view is fortified by the decision of the Gauhati High Court in *Bhagaban Talukdar Vs. Union of India & Others* [**Mil Law Journal 2002 Gauhati 159 (Gauhati High Court)**] and the decision of the Madras High Court in the case of *Sri K.G.Subramani, M.Krishnamoorthy Vs. Union of India & Others*.

37. The contention taken by the petitioner is untenable. In the present case, the Summary Court Martial has followed the direction of Rule 115 of the Army Rules and, therefore, the action cannot be considered violative of the principles of law as laid down under the Army Act/Rules. The certificate recorded in the trial proceedings and referred to earlier, clearly shows that before recording the plea of guilty the Court had explained to the accused the meaning of the charges to which he had pleaded guilty and also ascertained that the accused understood the nature of charges and the difference in procedure that would result from the plea of guilty being tendered. This is considered sufficient compliance with the provisions of Rule 115. The contention taken by the Petitioner in this regard is thus liable to be rejected.

38. In the course of his arguments the learned counsel for the petitioner had further contended that the petitioner being Havaldar did not understand English language and therefore charges should have been explained to him in the language that he understood.

39. The learned counsel for the respondents had, on the other hand, submitted in response that the petitioner was a well qualified person who understood English quite well. It was also

stated that the petitioner, as a Nursing Assistant, had received training on various subjects in English language and he also read the Medical Officer's prescriptions which were written in English during the performance of his duty. The learned counsel for the respondents had also referred to the trial proceedings and submitted that the petitioner had cross-examined some witnesses whilst declining to cross-examine others. His cross-examination showed that he fully understood the meaning and nature of the statements made by the witnesses.

40. The contention raised by the learned Counsel for the respondents that the trial proceedings do show that the petitioner clearly understood the nature and effect of the statements of the witnesses and duly cross examined some of them whilst choosing not to cross examine others is quite valid. The trial proceedings do reflect due discretion exercised by the petitioner in the matter of cross examination of various witnesses. There is, therefore, no merit in this contention taken by the petitioner as, it is noted in the first instance, that the trial proceedings clearly record the fact that the Court had explained to the accused the meaning of the charges to which he had pleaded "guilty" and ascertained that the accused had understood the nature of the charges to which he had pleaded guilty. The Court had also informed the accused of the general effect of the

plea and the difference in the procedure that would result from the plea tendered by him. The Court had also recorded that it had satisfied itself about the accused having understood the charges and the effect of his plea of guilty. Having so satisfied itself the Court accepted and recorded the same. There is no reason to doubt the certificate recorded by the Court. The contention taken by the petitioner is accordingly considered untenable.

41. For the reasons recorded above the petition is considered untenable. The petition is accordingly dismissed. The parties are to bear their own costs.

MEMBER (J)

MEMBER(A)