

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10501-2010 (O&M)

Date of Decision:-20.12.2017.

Sukhdev Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sandeep Bansal, Advocate for the petitioner.

Mr. Neeraj Yadav, Advocate for

Mr. Ashok Kumar Arora, Advocate for the respondents-UOI.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has challenged the validity of orders dated 30.03.2008, 03.06.2009 and 10.02.2010 (Annexures P-10, P-5 and P-11, respectively).

Petitioner while working as Havildar Major (Driver motor Transport), he caused accident with the vehicle No.BA No 98D-110591 Y (Truck) due to which one Sh. Narender Singh civilian died. Arising out of the motor accident, FIR was filed. Consequently, on 13.06.2006 file was transferred to Army authorities by the CJM, Amritsar. Court of inquiry was conducted in which Brigadier Station Commander passed the following order on 05.01.2006:-

“1. *I agree with the opinion of the Court.*

2. *Veh BA No 98D 115091Y ALS of 48 Fd*

Wksp Coy driven by No-14589051Y CHM Dvr(MT) Sukhdev Singh, met with an accident with Civ M/C Hero Honda PB 02-Y0774. The accident was circumstantial and beyond the control of the Mil driver, who despite his best efforts could not avert it.

3. *No body is to be blamed for the accident.”*

Further respondents proceeded to frame charges under Section 69 of the Army Act. Two charges were framed which read as under:-

<i>“First Charge Army Act Section 69</i>	<i>COMMITTING A CIVIL OFFENCE, THAT IS TO SAY CAUSING DEATH BY A RASH OR NEGLIGENT ACT AMOUNTING TO CULPABLE HOMICIDE, CONTRARY TO SECTION 304-A OF THE INDIAN PENAL CODE.</i>
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<i>Second Charge Army Act Section 69</i>	<i>COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DEATH BY A RASH OR NEGLIGENT ACT NOT AMOUNTING TO CULPABLE HOMICIDE, CONTRARY TO SECTION 304-A OF THE INDIAN PENAL CODE.”</i>
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On 19.08.2008, when the matter was under consideration under Rule 115 and 116 of the Army Rules, 1954 concerned authority was required to follow certain procedure relating to pleading of guilty or not guilty. Earlier point of time, petitioner pleaded not guilty. Later on 18.03.2009, authority stated to have complied Army Rules 117, 115 and 116 for which petitioner pleaded guilty for both the charges. The same has been recorded by the competent authority on 19.03.2009. Thus, proceeded to sentence the petitioner while imposing the penalty of Reduction - To be reduced to the ranks. Rigorous imprisonment – to suffer R.I. for one month and further directing that the sentence of R.I. shall be carried out by confinement in Military custody was ordered on 30.03.2008. Feeling

representation/appeal before the next higher authority. Higher authority has confirmed the order of sentence dated 30.03.2008 on 10.02.2010 (Annexure P-11). In the meanwhile, petitioner was discharged from service on 03.06.2009, since petitioner service was altered due to penalty of reversion. Hence, the present petition.

Learned counsel for the petitioner submitted that in the Court of inquiry, petitioner has been discharged on 05.01.2006. Thereafter, insofar as admission of charge Nos.1 and 2 are concerned, concerned authority was required to comply Rule 115 and 116 of the Army Rules. The same has not been complied. Therefore, order of sentence is liable to be set aside. Further it was contended that appellate authority – higher authority who has decided petitioner's representation/appeal dated 10.02.2010 has decided with reference to Rules 115 and 116 read with reasoning assigned by the sentencing authority so also while taking note of Court of inquiry decision dated 05.01.2006. It was further submitted that Court of inquiry proceedings cannot be taken into consideration for the purpose of deciding any matter under Rule 182. It was also submitted that order of discharge is with reference to the allegations as is evident from the provisions quoted in para 3 of the order of discharge dated 03.06.2009. Therefore, order of discharge is not in the normal course as stated in para 2 of the order of discharge. Had the petitioner continued in the post of Havildar, in the normal course he would have been discharged from service on 14.11.2011, whereas, petitioner has been discharged on 03.06.2009 w.e.f. 30.09.2009 (A/N) due to imposition of penalty.

Per contra learned counsel for the respondents while resisting

proceedings cannot be taken into consideration for the purpose of holding further inquiry pursuant to the charge-sheet issued on 19.08.2008. On 18.03.2009, authority sought petitioner's desire to plead guilty or not under Rule 117, 115 and 116 of the Army Rules. Further he has been granted one day time to rethink relating to pleading of guilty or not guilty. On 19.03.2009, petitioner had pleaded guilty for both the charges. Therefore, there is no infirmity in the order of sentence. It was further submitted that appellate authority while confirming the order of sentence dated 30.03.2008 taken into consideration relating to pleading of guilty read with the sentence order dated 30.03.2008. Therefore, there is no infirmity in the order passed by the higher authority dated 10.02.2010. Discharge order even though refers to wrong provision, however, having regard to the statement made in para 2 of the discharge order, it is crystal clear that it is in the normal course, petitioner has been discharged from service to the extent that he had completed 20 plus 2 years in the cadre of Sepoy. Therefore, merely quoting a wrong provision that does not vitiate the order.

Heard learned counsel for the parties.

Petitioner has rendered 23 years of service. The impugned orders are arising out of motor vehicle accident. Petitioner even though pleaded guilty in respect of charge Nos.1 and 2, however, for admission of pleading guilty or not guilty is governed by Rules, 115 and 116 of the Army Rules, 1954 which reads as under:-

“115. General plea of “Guilty” or “Not guilty”. (1) The accused person 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.

(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.

116. 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 of these charges, shall proceed with the charges on which a plea of “Guilty” has been entered; but if they 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, instead of trying him, record a finding 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) After the record of the plea of “Guilty” on a charge (if the trial does not proceed on any other charges), the court 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 reviewing officer to know all the circumstances connected with the offence. The evidence shall be taken in like manner as is directed by these rules in case of a plea of “Not guilty”.

(3) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) 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.

(5) 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 - rules (2) and (3) shall take place when the findings on the other charges in the same charge-sheet are recorded.

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

(7) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions of variations in accordance with sub -rule (3) of rule 121, it may, if it is satisfied of the justice of such course accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations."

Whereas the concerned authority while taking note of the petitioner's pleading guilty he has recorded as follows with reference to

Rules:-

"The friend of the accused informs the Court that the accused is fit to attend the trial.

At this stage of the Summary Court Martial proceedings, the accused submits that under the provisions of AR 117 I would like to withdraw my plea of "Not guilty" on first charge and second charge.

The court read out the provisions of AR 117, 115 and 116 and same has been explained to the accused including the effect of plea of guilty on both the charges.

The court decides to grant the accused time to rethink about withdraw of his plea of "Not guilty" on both the charges preferred against him.

At 1800 hours on 18 Mar 2009, the court adjourns, until 1000 hours on 19 March 2009."

Perusal of Rules 115 in particularly (2-A) it is crystal clear that in what manner authority is required to consider relating to pleading of guilty. Effect of pleading guilty has not been disclosed to the petitioner to the extent that if he pleads guilty he would be punished. On the other hand, what has been taken note of is *"the Court read out the provisions of AR 117, 115 and 116 and same has been explained to the accused including the effect of plea of guilty of both the charges."* Latter portion is a conclusive and not supportive of any reasons and what would be the effect. Whereas under sub-Rule 2-A of Rule 115 AR stipulates how it has to be considered and manner of consideration. Thus, it is evident that concerned authority has not complied Rule 115 (2-A) of the Army Rules, 1954. It is further to be noted that while imposing sentence, petitioner has been reduced to Havildar to Sepoy. In between Havildar and Sepoy rank of Naik is available. No reasons have been assigned by the concerned authority as to why petitioner is required to be reverted by 2 posts. Even though discretionary power is vested with the concerned authority. Thus, there is a

total non-application of mind even while reverting the petitioner from Havildar to Sepoy. That apart matter relates to motor vehicle accident which is beyond the control of the petitioner. No material has been produced like Regional Transport Authority's report or a technical person's report to the extent that motor vehicle accident has taken place due to the negligence of the petitioner. Mere admission of motor vehicle accident does not amount to that of admission of negligence on the part of petitioner. In view of these facts and circumstances and the fact that concerned authority has not complied Rule 115 (2-A) of the Army Rules, sentence dated 30.03.2008 is liable to be set aside. Accordingly, it is set aside. If the order of sentence is set aside, consequential effect would be that petitioner cannot be discharged from service having regard to the service in Havildar post is required to be taken into consideration for the purpose of discharging. If Havildar service is taken into consideration in that event respondents can pass order of discharge against the petitioner w.e.f. 14.11.2011, the date on which he completes 26 years. Therefore, order of discharge dated 03.06.2009 is also set aside. Insofar as consideration of appeal/representation by the higher authority dated 10.02.2010, same may not hold good for the reasons that once the sentence order is set aside. Having regard to the aforesaid facts and circumstances, matter cannot be remanded to the sentencing authority at this juncture due to the reasons that if the petitioner had he been in service as Havildar, he would have been discharged from service on 14.11.2011. Therefore, question of remanding the matter to the sentencing authority to re-consider relating to compliance of Rule 115 (2-A) read with Rule 116 of the Army Rules do not arise. In

discharged from service w.e.f. 14.11.2011 in the cadre of Havildar. Concerned respondents are hereby directed to extend all service and monetary benefits for the intervening period from 1.10.2009 to 14.11.2011 in the cadre of Havildar as if he was in service. The above exercise shall be completed by the concerned authorities within a period of 4 months from today.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

December 20, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.