

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 02, 2016

Judgment delivered on: February 20, 2017

+ W.P.(C) 18883/2005

EX. CT. MADAN MOHAN

..... Petitioner

Through: Mr. Meet Malhotra, Sr. Adv. with Mr.
Ravi S. S. Chauhan, Mr. Manjeet
Chawla & Ms. Pallak Singh, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Dr. Ashwani Bhardwaj, Adv. with Mr.
Arvind Sharma, DC, BSF

CORAM:

HON'BLE MS JUSTICE INDIRA BANERJEE

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:-

“(i) Issue a writ in the nature of certiorari quashing the impugned SSFC trail proceedings by which the petitioner has been sentenced to dismissal from service vide Annexure P-5 (Colly) as well as Ministry of Home Affairs, Directorate General Border Security Force letter dated 26/28 Feb 2005, upholding the said findings and sentence.

(ii) *Issue a writ in the nature of mandamus commanding the respondents to reinstate the petitioner in service with all consequential relief and full back wages.*

(iii) *Pass such other order/s as may be deemed fit in the facts and circumstances of the case.”*

FACTS:-

2. The petitioner was enrolled in the Border Security Force on February 15, 1991. After completing the training, he joined his unit on January 31, 1993. For certain acts, the petitioner was proceeded by SSFC on charges under Section 20(b), 20(c), 19(f) and 26 of the BSF Act, which resulted in the punishment of dismissal from service. The Statutory Petition filed by the petitioner with the Directorate General, Border Security Force was also rejected vide the order dated February 28, 2005. It is noted from the record that the petitioner was heard by the Commandant under Rule 45 BSF Rules on March 5, 2004 in which he pleaded not guilty to first three charges and guilty to the fourth charge. Thereafter, he was remanded for preparation of RoE. It is noted that during the RoE, witnesses were examined. It is also noted that the petitioner had cross examined certain witnesses and not all. He was also directed to produce witnesses, which he refused to produce in his defence. Thereafter, the following charges were framed:-

“Charge-I Using threatening language to his superior officer (Section 20(b))

In that he,

At BOP Dangapara on 1.3.2004 at about 2000 hrs used threatening language to No.69955065 SI J.P. Yadav of the same Unit by saying “GOLI MAR DUNGA” or words to that effect.

Charge-II Using insubordinate language to his superior officer (Section 20(c))

In that he

At BOP Dangapara on 1.3.2004 at about 2000 hrs used insubordinate language to No.69955065 SI J.P. Yadav stating in a very loud voice “TERI MA KI CHUT, TUM KAOUN HOTA HAIN,” or words to that effect.

Charge-III When in camp being found in a place prohibited by a unit order without a pass (Section 19(f))

In that he

At BOP Dangapara on 1.3.2004 at about 1740 hrs found out of BOP without pass/permission in a place declared out of bound to all ranks by the Commandant in Sainik Sammelan.

Charge-IV Intoxication (Section 26)

In that he

At BOP Dangapara on 1.3.2004 at about 2000 hrs was found in a state of intoxication.

3. Summary Security Force Court was held on March 31, 2004. It is noted that during trial, he pleaded guilty of all the four charges and the Court then ascertained by noting Rule 142(2) of the BSF Rules that the petitioner understood the nature of the charges to which he has pleaded guilty. Since he was found guilty of all four charges, findings of guilty on all

charges were recorded, which resulted in the penalty of dismissal imposed on him on March 31, 2004.

4. Mr. Meet Malhotra, learned Senior Counsel appearing for the petitioner would challenge the impugned order and the SSFC proceedings primarily on the ground that there is violation of the BSF Act and the Rules, inasmuch as; (i) the proceedings were in English whereas the petitioner only understood Hindi; no endorsement was made to show that he was made to understand the gist of the proceedings in Hindi; an interpreter was appointed though, no affirming of the interpreter, as required under Rules 134 and 136 of the BSF Act, 1968 and Rules, 1969 was carried out; (ii) petitioner was not provided with the copy of statement of witnesses; (iii) the signatures of the petitioner or his friend were not obtained when plea of guilt was recorded, which is in violation of Rule 142(2) of the Rules of 1969.

5. Mr. Meet Malhotra states, the Rule is procedural and would apply even retrospectively, more so when Rule 142(2) was amended on account of repeated observations of this Court that BSF was abusing the process of Court Martial by summarily and arbitrarily recording pleas of guilt against the accused officers. He would also state that even otherwise, statutory safeguard of Rule 142 (2) of the Rules of 1969 was available to the petitioner on the basis of settled law of this Court in the following judgments:-

- (i) **2008 (104) DRJ 749 (DB) Mahender Singh v. Union of India and ors;**
- (ii) **152 (2008) DLT 611 (DB) Subhash Chander (Ex. Naik) v. Union of India and ors;**
- (iii) **2010 LawSuit (Raj) 98 Union of India v. Devi Lal Sahu;**

- (iv) *171 (2010) DLT 261 (DB) Vimal Kumar Singh v. Union of India;*
- (v) *2012 LawSuit (Del) 1162 Devender Kumar v. Union of India and ors;*
- (vi) *Anil Kumar v. UOI and ors W.P.(C) 2681/2000 decided on August 06, 2012;*
- (vii) *Ex. Const. Kalu Ram v. U.O.I W.P.(C) No. 4997/1998 decided on August 16, 2012;*
- (viii) *2012 LawSuit (Del) 2168 Umesh Prasad v. Union of India and ors;*
- (ix) *Jitender Kumar v. Union of India WP (C) No. 5631/2000 decided on September 3, 2012.*

6. Even otherwise, it is sought to be contended that the punishment of dismissal from service for an offence if at all of intoxication is far too disproportionate, harsh and may be reduced keeping in view the service record; the petitioner got injured in the fight, the petitioner was not drinking on duty/shift; the petitioner was never examined medically to establish he was intoxicated.

7. On the other hand, Dr. Ashwani Bhardwaj learned counsel for the respondents would submit that the SSFC had complied with the provision of Rule 142(2) and has while recording the plea of guilt, noted the Court had explained to the petitioner the meaning of charge to which he pleaded guilty and ascertained that the petitioner has understood the nature of the charge to which he has pleaded guilty. He states that the Court also informed the petitioner the general effect of that plea and the procedure, which will be followed consequent to the said plea. The Court had satisfied itself that the petitioner understands the charge and the fate of his plea of guilty to the charge. He would state, merely because the signature of the petitioner has not been obtained would not ipso facto result in the setting

aside of the findings of the SSFC, dismissal order and the subsequent dismissal of the Statutory Petition. He would state that there is enough evidence on record to show that the petitioner had rightly pleaded guilty as during the Record of Evidence, every witness has deposed against the petitioner herein. Even during cross examination by the petitioner of certain witnesses, the evidence which has come has not been demolished. He would also state that the petitioner has refused to cross examine one important witness Sub-Inspector Yadav. He would also state the statement of the petitioner was also recorded.

8. Having heard the learned counsel for the parties, there is no denial to the fact that the plea of guilty recorded in the initial proceedings held on March 5, 2004, the petitioner pleaded guilty against charge No.4. After recording of the evidence, it is an admitted fact, the plea of guilty recorded on March 31, 2004 against the four charges, the same does not bear the signature of the petitioner. No doubt, during the relevant period, there was no requirement for taking the signature of the delinquent officer and Rule 142(2) of the Rules of 1969, existed in the following manner:-

“142(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.”

9. The law as relied upon by the learned Senior Counsel for the petitioner in the case of ***Mahender Singh v. Union of India (supra)***, ***Subhash Chander v. Union of India (supra)***, ***Union of India v. Devi Lal Sahu (supra)***, ***Devender Kumar v. Union of India (supra)***, does say that not taking signatures on the plea of guilty of the accused officer, shall vitiate the proceedings. But insofar as the case of ***Anil Kumar (supra)*** is concerned, this Court has held that a procedural default cannot be equated with substantive default and merely because a plea of guilty does not bear the signatures of the accused, is no ground to conclude in favour of the accused. The correct approach was to apply the judicial mind and look at the surrounding circumstances enwombing the arraignment. It may be stated here that in ***Anil Kumar (supra)***, ***Kaluram (supra)*** and ***Umesh Prasad (supra)*** cases, on a reading of the surrounding circumstances, and on the ground that the second limb of Rule 142(2) was not followed by the Commandant, the petitioners had succeeded.

10. In ***Anil Kumar (supra)*** the Court held that the record has been falsified; the petitioner's case was well supported by medical condition, which resulted in the abandonment of the duty post. In ***Umesh Prasad (supra)***, the Court held the original not being produced; the signatures of the petitioner not being obtained beneath the plea of guilt; the petitioner taking a stand that he never pleaded guilty and in ***Jitender Kumar (supra)***, on a finding that the petitioner was admittedly on leave; he was to proceed to home town;

official transport vehicle to drop him to the bus stand was not available, he has thus to walk down the civilian area to reach the bus stand, the Court allowed the petitions.

11. Noting the aforesaid position of law, we cannot accept the plea of the petitioner that not taking the signatures of the petitioner on the plea of guilty, shall vitiate the proceedings. We have to see the surrounding circumstances. In the case in hand, the respondent Department has produced seven witnesses; seventh being a formal witness who had produced during the RoE the detail reports submitted by Subedar S.K. Thapa (Officiating Company Commander), Sub-Inspector Y.P. Yadav (Post Commander), HC C.K. Gogoi (Platoon Hawaldar) regarding the misconduct of Ct. Madan Mohan on March 1, 2004 consisting of four pages. The statement of six witnesses and their cross examination by the petitioner (of PW1, PW2 and PW4) are reproduced as under:-

“PW 1

I, No.708555013 Inspector S.K. Thapa, Caste Hindu, do solemnly truly and sincerely declare and affirm that whatsoever I shall state, shall be the truth and nothing but the truth.

I had joined 87 Bn BSF in the month of June 2001 at Udhampur on permanent posting from CD(G) Dhamkund team in the rank of Sub Inspector. Initially I was posted in ‘B’ Coy then I was put as a SI (Adjutant) of 87 Bn BSF. In the month of May 2002 I was promoted to the rank of Inspector and posted to ‘A’ Coy of 87 Bn BSF and since then I have been performing in ‘A’ Coy only.

At present also I am performing the duties of Offg Coy Comdr in ‘A’ Coy at BOP Khalpara, Coy HW location.

It is an incident of 25th Feb 2004. During intervening night of 25th and 26th Feb 2004 at about 2300 hrs, I reached BOP Dangapara (One out post) of my 'A' Coy). As a matter of routine practice, I called Sub Insp Y.P. Yadav Post Comdr and asked him to carry out 'Stand to' which I checked by visiting almost all defences of BOP. After that, during stand down and falling parade I checked the strength of BOP and compare it with the duty register & general diary. During this checking I found that No.914886321 Ct. Madan Mohan was missing, upon this I ordered Platoon Hawaldar C. K. Gogoi to search out the Ct. Madan Mohan.

Then after a gap of about 10 minutes HC Gogoi brought him to the place where all the platoon personnel were fallen. I checked carefully and found that Ct. Madan Mohan was heavily drunk and was not in the position to talk in a normal way. Henceforth I instructed post Comdr. Y.P. Yadav to take care of Ct. Madan Mohan because he was heavily drunk, being on ground duty w.e.f 1600 hrs to 1900 hrs. I also ordered HC C K Gogoi that he be brought Ct. Madan Mohan to Coy HQ Khalapara on next day morning i.e on 26th Feb 2004 morning.

On 26th Feb 2004 at Coy HQ Khalpara, Ct. Madan Mohan apologized in written about his gone night mistake. I hereby produce a copy of written apology to the recording officer as an EXHIBIT-I.

After, on 1st March 2004 I again visited BOP Dangapara at about 1700 hrs where I found that Ct. Madan Mohan was again in a state of heavily drunk. Post Comdr Y.P. Yadav Sub Inspector and other personnel of BOP told me, that entire post is sick of this Ct. Madan Mohan's misbehavior and indiscipline way of living and they all requested me to take some stern action against Ct. Madan Mohan who is always remain in a state of drunk and misbehave with

his colleagues and even seniors also by using abuse language etc. At that time, I advised post Comdr Y.P. Yadav so that situation be made cool. I told Post Comdr that during the state of drunk Ct. Madan Mohan was not given any duty and was let off for rest. Then I came back to Coy HQ.

On some day at about 2100 hrs I along with CHM Laxman Singh went out for checking of Naka/Patrolling. While we were moving towards BP No.780 Main, we heard some noise and saw torch lights at BOP Dangapara. On taking the notice of it, I along with CHM went to the BOP Dangapara where I found Ct. Madan Mohan was standing in a position, appears to fall down any time and was showing, abusing and creating nuisance. Almost all the personnel were standing beside him.

On my enquiry, post Comdr told me that Post Comdr alongwith HC C K Gogoi, HC Subroto Das and Ct. Kendra Pal have brought him back from nearby village Dangapara where he was found in almost senseless drunkard state.

On my arrival at BOP Dangapara found Ct. Madan Mohan was also having some bleeding on his left frontal head. Post Comdr confirmed that in village Dangapara, Ct. Madan Mohan had scuffled with some villagers after taking drunk there and also met injury there only.

Then I had brought Ct. Madan Mohan to Coy HQ where he was given first aid by Ct. Dhyanpal and later Ct. Madan Mohan went to sleep.

I arranged special guard for him during that night for fear that he may not again run away from Coy HQ.

On next day i.e 2.3.2004 I talked to Adjutant at about 0830 hrs about the entire episode stage by Ct. Madan Mohan, Adjutant directed me to sent Ct. Madan Mohan to Bn HQ under proper escort along with offence report. So

accordingly Ct. Madan Mohan was sent to Bn HQ in Gypsy along with HC R P Pradhan and Ct. Basha Sediq.

CROSS EXAMINATION BY ACCUSED

Q.1 You have told to recording officer that while you reached at BOP Dangapara you were told at BOP that I was brought back from village Dangapara in heavily drunk state and in village I had scuffled with villagers and also met injury there only at my forehead. Who were those people who told you about all this?

Ans. Post Comdr Y P Yadav, HC C K Gogoi, HC Subroto Das and Ct. Kendra Pal. They also told that you had caught the color of Post Comdr Y P Yadav and also given boxing to Y P Yadav and HC C K Gogoi while you were being brought back to BOP.

The above statement (recorded on 07 pages) has been read over to the witness-1 in the presence and hearing of accused in the language they both understand i.e in Hindi and they sign it as correct.

PW 2

I No.84855005 HC Chandra Kant Gogoi, Caste Hindu, do solemnly truly and sincerely declare and affirm that whatsoever I shall state, shall be the truth and nothing but the truth.

I had joined 87 Bn BSF in the month of August 2001, while Unit was under move from Udhampur to Raninagar i.e the present location. Initially I was posted to 'B' Coy and since June 2003 I am performing in this 'A' Coy as a Platoon Havildar of Platoon No.2 at BOP Dangapara.

On 25.2.2004 I was performing the duty of Guard Comdr of BOP Dangapara. In the gate guard Ct. Madan Mohan (No. 914886321) was also detailed in the

effect from 1600 hrs to 1600 hrs of 26.2.2004, where duty period were as follow:-

25.2.2004	-	1600 hrs to 1600 hrs
26.2.2004	-	0100 hrs to 0400 hrs
26.2.2004	-	1000 hrs to 1200 hrs

I hereby produce the duty register of BOP Dangapara to the recording officer. Recording officer checked the record and noted.

On 25.2.2004 Ct. Madan Mohan performed his first duty i.e w.e.f 1600 hrs to 1900 hrs and after duty he went to sleep. At about 2300 hrs Coy Comdr Sh. S K Thapa Inspector reached BOP Dangapara for night checking and he ordered for carrying out stand to. During counting Ct. Madan Mohan was found missing. After that search for Ct. Madan Mohan was carried out at BOP Dangapara but he was not found at BOP. Then Coy Comdr ordered to go toward village Dangapara, as Coy Comdr was suspecting Ct. Madan Mohan might have gone to village for want of country liquor as he is a habitual drunkard.

Then I along with Ct. Veer Singh went towards village Dangapara. At a distance of about 40 yards from BOP gate towards village Dangapara, we found Ct. Madan Mohan who was coming towards BOP in highly drunk state and was not in position to even walk properly. I along with Ct. Veer Singh brought Ct. Madan Mohan to Coy Comdr Sub S K Thapa Coy Comdr checked Ct. Madan Mohan and ordered BOP Comdr Shri Y P Yadav Sub Inspector to make Ct. Madan Mohan sleep for the night and his rifle which was kept near his bed be seized and be deposited with Kote. As Kote Comdr was out for patrolling duty so Ct. Kasturi Lal (PI Clerk). After this Coy Comdr went back to Coy HQ and while going he ordered post Comdr that next morning Ct.

Madan Mohan be sent to Coy HQ for initiating further necessary action along with proper guard.

On 26.2.2004, morning while I asked Ct. Madan Mohan to be ready to go to Coy HQ he ordered by Coy Comdr. At first Ct. Madan Mohan refused to do so but later he agreed to go to Coy HQ in normal dress and he again refused to bear Havre sack as per Coy Comdr's instructions. After reaching Coy HQ Ct. Madan Mohan apologized for the act he done during gone night in writing. Thereafter Coy Comdr briefed Ct. Madan Mohan and warned him not to repeat the same act.

Again on 1.3.2004 Ct. Madan Mohan went to Coy HQ to fetch his loaned money from some one at Coy HQ at 0730 Hrs. After taking money while he came back, he was again in the heavily drunk condition.

On same day at about 1100 hrs Ct. Madan Mohan again went to village Dangapara and came back to BOP at 1200 Hrs after consuming country liquor. Again after half an hour, Ct. Madan Mohan asked me to permit him to go to village shop to bring Bedies. Upon this I refused and arranged two packets of Bedies at BOP only.

Again at 1330 Hrs Ct. Madan Mohan went out of BOP Dangapara without asking any body, about which I came to know while I fallen the BOP men at 1430 hrs for carrying out working at BOP. After a few minutes, a person came running from village Dangapara and intimated sentry of BOP gate that Ct. Madan Mohan is lying at village shop in senseless drunk condition. Upon this, post Comdr send HC Subodh Rai to bring back Ct. Madan Mohan. While HC Subodh Rai was bringing Ct. Madan Mohan to BOP assisting him in walking. I noticed that Ct. Madan Mohan was not in the sense and abusing HC Subodh Rai with very shabby language. I also found some blood dots upon his shirt

and there were scratches on his chest, which were showing that he might have scuffled with some one in village. Regarding out and in from BOP all entries have checked in gate register which matches with the timings given by PW-II and shown to RO.

On same day at about 1700 hrs Coy Comdr Sub S K Thapa visited BOP Dangapara and took the notice of condition of Ct. Madan Mohan. He also ordered post Comdr Sub Inspector Y P Yadav not to put Ct. Madan Mohan on duty and deposit his rifle in Kote. During this night Ct. Madan Mohan was initially detailed for patrol duty but on the order of Coy Comdr, his duty was cancelled. It has been confirmed after consulting GD, Kote register etc by recording officer.

During same night at about 2000 hrs while checking by me, I found Ct. Madan Mohan missing from BOP. Thereafter I along with BOP Comdr Y P Yadav and Ct. Kender Pal went out towards village Dangapara to search Ct. Madan Mohan. As soon as we went out the gate of BOP we found Ct. Madan Mohan was coming to BOP and was not in position to walk properly. We saw this all because it was moon night, so every thing was visible. On seeing us, Ct. Madan Mohan tried to ran away following the filed, but fallen down in small ditch adjacent to the road. WE all the three, went to him and pick from his forehead. While we tried to pick him up, Ct. Madan Mohan abused BOP Comdr Y P Yadav in very dirty language. Thereafter we brought Ct. Madan Mohan to BOP and Sub Inspr Y P Yadav rang up Coy Comdr to submit/lodge complaint about Ct. Madan Mohan. Upon this Ct. Madan Mohan assaulted upon, BOP Comdr, who saved himself by changing his position to a little further place. Ct. Madan Mohan also abused Sh. Y P Yadav in the manner 'TERI MA KI CHUT', who are you to complaint about me, to say Coy Comdr,

will see you, by saying this he snatched the telephone cordial from Sub Inspr Y P Yadav.

Thereafter a few minutes, Coy Comdr Sh. S K Thapa came to BOP Dangapara and took along Ct. Madan Mohan to Coy HQ.

CROSS EXAMINATION BY ACCUSED

Q.1 About incident of 25.2.2004 you have told that you and Ct.Veer Singh had gone to village Dangapara and found me coming towards BOP and caught me from a distance of about 400 yard. Recording officer should call Ct. Veer Singh and ask him about the distance?

Ans. It was moon light so, although it was not possible to judge the distance exactly, but I produce Ct. Veer Singh "Called by RO and asked about the distance which come out to be about 200 yards.

Q.2 You have given statement about the episode 1.3.2004 in a perpetual manner? But you were out from the BOP for bringing CD from Satkura in between 1100 hrs to 1630 hrs?

Ans. No I have not gone anywhere out of BOP Dangapara that day. I hereby produce gate in and out register in which I had gone for fence checking at 0745 hrs and came back at 1100 hrs along with SI Abhilash Kumar and Ct. Daya Ram and after that I remained available at BOP Dangapara.

The above statement (recorded on 08 pages) has been read over to the witness-II in the presence and hearing of accused in the language they both understand i.e in Hindi and they sign it as correct.

PW 3

I, Bhutia Rai S/o Late Ambhole Rai Village Dangapara, PO & PS Haldibari, Distt. Coochebhar, Hindu, do solemnly, truly and sincerely declare

and affirm that whatsoever I shall state, shall be the truth and nothing but the truth.

It is incident of 01.03.04 at about 1430 hrs. I was taking my lunch at my residence and my wife Mrs. Budhewala Rai age about 55 yrs was sitting beside me. All of a sudden one Constable of BSF to whom I identify as 'who is at present sitting my right is right same man', appeared and fallen in front of me having consumed liquor and later sat and started taking rice from the same plate in which I was taking. I requested him not to do so, but he tried to snatch my plate.

Just after one Havildar Major of BSF came and took the constable along to BOP Dangapara.

CROSS EXAMINATION BY ACCUSED

Accused No.914886321 Ct. Madan Mohan has declined to cross examine the PW-3 i.e. Shri Bhutia Rai of Village Dangapara.

The above statement has been read over to PW-3 Shri Bhutia Rai in the presence and hearing of accused Ct. Madan Mohan in the language they understand i.e. in Bangla and Hindi, they understood it and sign it as correct in the presence of an independent witness Sh. B. Bose College Para, PO & PS Siliguri as translator."

PW 4

I No.90173439 Ct. Kender Pal Singh, Caste Hindu, do solemnly truly and sincerely declare and affirm that whatsoever I shall state, shall be the truth and nothing but the truth.

I had joined 87 Bn BSF in Oct 1990. Initially I was posted to 'A'Coy and in the month of August 1998 after undergoing cadre of Nursing Assistant, I joined

Unit Hospital. At present again I am performing duties of GD and Ct. Nursing Assistant in 'A' Coy since Oct 2003 at BOP Dangapara.

On dated 1.3.2004 at about 1430 hrs HC Subodh Rai ask me to give cycle, because he had to go to village Dangapara to bring back Ct. Madan Mohan. At about 1530 hrs HC Subodh Rai came back to BOP leaving my cycle some where on road, because he was bringing Ct. Madan Mohan along with him and Ct. Madan Mohan was coming, continuously abusing in a shabby language behind HC Subodh Rai. By then I noticed that Ct. Madan Mohan was in heavily drunk state by that time Sub Inspr Y P Yadav and HC C K Gogoi (PI Havildar) both were available in the camp and I told them about his state. AT about 1700 hrs Offg Coy Comdr Sh. S K Thapa (Subedar) arrived at BOP Dangapara who called Ct. Madan Mohan and ask him to sit in his vehicle because Post Comdr Sh. Y P Yadav SI had already told Coy Comdr about the act of Ct. Madan Mohan about his going to village and consuming of liquor there.

On the request of other BOP person, Coy Comdr Sh. Thapa spared Ct. Madan Mohan but warned him not to repeat the same activities.

In the same evening at about 2000 hrs BOP Comdr Sh. Y P Yadav called me and HC Gogoi and asked to accompany him in search of Ct. Madan Mohan who is again missing from BOP. While we all were going towards village Dangapara at about 250 yards from BOP, we found Ct. Madan Mohan was coming towards BOP. On seeing us Ct. Madan Mohan start running across the fields but fallen in a ditch nearby to road. We went his and pick him up and I found that he was heavily drunk by that time and not in the position to even walk properly. I also noticed it was bleeding in the forehead which we were bringing him towards BOP, Ct. Madan Mohan turn out to be scuffled

with Sub Inspr Y P Yadav Post Comdr to whom he caught from the shoulder strip and also gave a punch to Post Comdr.

Then I caught Ct. Madan Mohan in a firm grip and brought him to BOP. After reaching BOP Sub Inspr Y P Yadav gave a ring to Coy HQ and by then, all of sudden Ct. Madan Mohan assaulted upon Sub Inspr Y P Yadav who saved himself by changing his position in verandah of office room by that time Ct. Madan Mohan was abusing to Sub Inspr Yadav saying “TERI MA KI CHUT AND TERI MA CHOD DOUNGA” etc.

Thereafter a few minutes, Offg Coy Comdr Sh. S. K. Thapa arrived at BOP along with CHM and took Ct. Madan Mohan along with him to Coy HQ in his vehicles.

CROSS EXAMINATION BY ACCUSED

Q.1 While Sub Inspector Y P Yadav and HC C K Gogoi picked me up from the place when I was fallen down in a ditch, were were you by that time?

Ans. I was accompanying then both, but you yourself were quite out of sense after consuming desi liquor and was not in position to recognized any body.

The above statement (recorded on 04 pages) has been read over to the witness-4 in the presence and hearing of accused in the language they both understand i.e in Hindi and they sign it as correct.”

“PW-5

I, No.87655167 HC Subodh Rai, caste Hindu, do solemnly, truly and sincerely declare and affirm that whatsoever I shall state, shall be the truth and nothing but the truth.

I had joined 87 Bn BSF in March 1988 and presently I am serving in ‘A’ Coy at its outpost BOP Dangapara.

On 01.03.04, I was detailed for day patrolling w.e.f. 1345 hrs to 1615 hrs. because patrolling beat is nearer to BOP Dangapara and I am also performing duty of BOP Kote Comdr so after leaving Ct V T Chandran and Ct Veer Singh performing patrol duty near fencing I came to BOP at 1500 hrs. because I had to issue weapons to other parties for stand to and border Ops.

As soon as I entered BOP, I was called by BOP Comdr Sub Inspr Y. P.Yadav who ordered me to go to Village Dangapara to bring back Constable Madan Mohan who was reported to be in village in drunk condition. I took the cycle from Ct Kendra Pal and rushed for village Dangapara, Adjacent to Dangapara-Haldibari road near village shop, I saw some villagers including ladies and children were accumulated there so I went to that spot and found that Ct Madan Mohan was sitting in a house verandah where an old man was taking his lunch. Reaching there I asked Madan Mohan, what is he doing there? Madan Mohan was having a glass of water in his hand and did not reply me and simply stayed gazing me. Immediately that old man told that, this Ct Madan Mohan wanted to eat with me in my plate only and not accepting food in other plate separately.

Then I asked Ct Madan Mohan to come along to go to BOP so Ct Madan Mohan started walking with me, because he was not in position to sit on the cycle, so I had to drop my cycle there only. Also the cycle of Ct Madan Mohan was lying there to which we recover later.

On way back Ct. Madan Mohan kept on abusing me. After reaching BOP, I handed over Ct Madan Mohan to BOP Comdr SI Y.P.Yadav, in a state of senseless due to heavily drunk. After that, I went to Kote to issue weapons to other persons of BOP.

CROSS EXAMINATION BY ACCUSED

Accused No.914886321 Ct. Madan Mohan has declined to cross examination the PW-5.

The above statement of three pages only has been read over to PW-5 in the presence and hearing of accused in the language he understood they understand i.e. in Hindi. They both understood it and sign it as correct.”

PW-6

I, No.69955065 Sub Inspr Y.P.Yadav of 'A' Coy 87 Bn. Caste Hindu, do solemnly, truly and sincerely declare and affirm that whatsoever I shall state, shall be the truth and nothing but the truth.

I had joined this 87 Bn BSF in the month of Sep' 1980 in the rank of NK. After that I got two promotions in this Unit only and presently I am performing in the rank of Sub Inspector at BOP Dangapara as a post Comdr which is an outpost 'A' Coy.

On dated 01.03.04 at about 1940 hrs gate sentry Ct Man Mohan Senapati informed me that Ct Madan Mohan is missing from the BOP Dangapara, because during same day time he was brought back by HC Subodh Rai of BOP Dangapara from village Dangapara in a state of heavily drunk, so I had alerted all the BOP personnel to inform me if again he go out of BOP towards village Dangapara.

As sentry, Man Mohan Senapati informed me about the missing of Ct Madan Mohan from BOP. I took HC C.K.Gogoi (PI Havildar) and Constable Kender Pal along and went out to bring back Ct Madan Mohan from village Dangapara when we go out of BOP and at about 200 or 250 yards, we saw Constable Madan Mohan coming towards BOP.

When I gave a call to him he started running away across the fields and he fell down in a ditch nearer to BOP road. We all the three rushed to the place where he

was fallen and pick him up. That time he was heavily drunk and also had injury in his forehead from where it was bleeding.

When we tried to pick him up, he gave me a boxing and also abusing in very shabby and nonsense language.

After bringing him into BOP he was made sit there near HC D.K.Mishra and I started trying to contact Offg. Coy Comdr Sh. S.K.Thapa on phone. During that moment only, Ct Madan Mohan gave me a push away from telephone and started abusing me in a language as “Teri Ma Ki Chut, Ap kon hote hain Coy Comdr ko telephone karne wale, awoh to main karoonga” and he forcibly snatched the telephone credit from my hand.

In the meantime Offg Coy Comdr Sh S.K.Thapa along with CHM Laxman Singh arrived there. In the presence of them also Ct Madan Mohan went on abusing me and also uttered these words in threatening language ‘Beta apko to main goli maroga.’

Prior to this also, on 25.02.2004 Ct Madan Mohan remained missing from BOP at about 2000 hrs to 2100 hrs and after a long search he was recovered from village Dangapara in a state of heavily intoxicated. That day also Ct Madan Mohan was spared by Offg Coy Comdr S.K.Thapa ‘Subedar’ after he apologized in written, a copy of which I hereby produced to recording officer for documentary proof.

It is hereby submitted that Ct Madan Mohan is a habitual offender, earlier to this also he had been doing a big blunders and also awarded a number of punishments for a number of times.

CROSS EXAMINATION BY ACCUSED

Accused declined to cross examine the witness No.6 i.e. No.69955065 Sub Insp Y.P.Yadav.

The above statement has been read over to the witness in the presence and hearing of the accused in the language they understand i.e. in Hindi and sign it as correct.

STATEMENT OF ACCUSED IN COMPLIANCE OF RULE 48

No. 914886321 Ct Madan Mohan of 'A' Coy 87 Bn BSF, the accused in compliance to rule 48 of BSF act has been cautioned in the following manner.

You may make a statement, "you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence."

The accused No.914886321 Ct Madan Mohan of 'A' Coy 87 Bn BSF desires to make a statement.

STATEMENT OF THE ACCUSED

I No.914886321 Ct Madan Mohan (accused) of 'A' Coy 87 Bn BSF states that,

On 25th Feb. 2004, I was detailed for camp security guard duty at BOP Gate from 1600 hrs to 1900 hrs. After completion of duty at 1900 hrs. I was called by BOP Comdr Y.P.Yadav Sub Inspector while he was sitting at a place, which has been prepared for sitting of visitors who came from Bn HQ etc. Sh. Y.P.Jadav Sub Inspector was sitting there with a bottle of country liquor and a glass in his hand. He offered me a glass of liquor and asked me to sit in the chair lying beside him. Initially I refused to take liquor, but Sh. Y.P.Yadav Sub Inspector told me that he is the post Comdr so what I am afraid. So I consumed only one peg and went to my bed for sleeping.

Because during day time, I also having some problem of loose motion, may be under reason, I fell complaint of stomach pain at about 2240 hrs, while I was sleeping.

Then immediately, I got up and went towards gate of BOP where already one bottle filled with water was kept by me during day time. While I was out from BOP

for passing motion then and then only Offg Coy Comdr Sh. S.K.Thapa reached BOP in his vehicle and asked BOP Comdr Sh.Y.P.Yadav to carry out stand to.

After stand down, all BOP personnel were fallen by Coy Comdr and checked about the number of person available at BOP.

I reached the place of fallen after about ten minutes. Then I was called by Offg Coy Comdr Sh.S.K.Thapa who asked me “where were you and are you coming after consuming liquor?” Then I admitted my mistake in front of all the BOP person present there including Offg Coy Comdr and BOP Comdr. Sh.S.K.Thapa Offg Coy Comdr asked me to come to Coy HQ on 26.02.04 the next day to settle the matter of my state of drunk.

On 26th Feb. I went to Coy HQ along with HC C.K.Gogai PI havildar. There Offg Coy Comdr asked me to apologize in written and also to give a word for not consuming the liquor in future. So I did so and I submitted apology in written. Then I again come back to BOP Dangapara.

After that upto 1st March, 2004 I was alright and did perform my duty in normal way. On 1st March at about 0700 hrs., after getting permission from PI Havildar HC C.K.Gogoi I went to Coy HQ Khalpara alone to recover my Rs.2,000/- only from Ct R.S. Negi to whom I had this money about two months back on loan after proper entry in the gate in/our register from Coy HQ. I came back at about 0900 hrs so after that I participated in working along with other for maintenance of BOP upto 1030 hrs. Thereafter at about 1100 hrs I went to village shop for purchase of bidi (country cigarette) from where I came back after ten minutes. Then I did my personal maintenance like washing of clothes etc.

After that at about 1230 hrs post Comdr Sh. Y.P.Yadav called me while he was sitting in front of his room and again offered me a glass of country liquor, because he already sitting there consuming it. There was nobody around because someone were

taking rest in barrack and others were taking lunch in mess. Firstly I refused but while he forced me, then I accepted and swallowed one glass of country liquor. Then he again gave a glass filled with same liquor then I refused and puffed my hand, in this course of action the glass fell down. Thereafter I went to take lunch and afterward I went to barrack and become busy in writing letter to my home etc.

On the same day at about 1600 hrs., HC C.K.Gogoi who went out for bringing CD player and CD to see picture came back to BOP from Satkura along with CD player and CD.

On the same day all border Ops parties went out of BOP for ambushes and patrol at 1730 hrs and after then departure post Comdr Sh. Y.P.Yadav ordered to start CD player with picture 'Bhagwanta' and all the personnel available at BOP sat to see movie. After that at about 1900 hrs while I was watching picture, HC C.K.Gogoi came to me and told that Sh.Y.P.Yadav Post Comdr calling me. I went out to see Post Comdr who was sitting in varandah in front of his room. Behind me HC C.K.Gogoi also came. Then BOP Comdr went to his room and came out with one bottle of country liquor and three glasses in his hand. He asked me to sit nearer to him on the ground itself while they both were sitting in the chairs. Afterward, Sh.Y.P.Yadav post Comdr titled three glasses with liquor and handed one glass to HC C.K.Gogoi and one glass to me. While they both compelled me then I swallowed that glass full of liquor and then they again gilled my glass, which I again finished. After consuming two glasses I felt the influence of intoxication.

During those moments only Sh.Y.P.Yadav Post Comdr started abusing me and uttered then words 'Mather chod Ab teri ma chodege' while I countered with request that why I am being abused, in that manner then Sh.Y.P.Yadav slapped on my face and went on abusing me. Immediately HC C.K.Gogoi who was standing behind pulled out his belt and showered striking with belt on my head.

While this all was going on, Offg Coy Comdr Sh.S.K.Thapa arrived there in his Gypsy (Veh) all of a sudden. On seeing Offg Coy Comdr Post Comdr Sh.Y.P.Yadav Sh HC C.K.Gogoi turned afraid and then they started quoting stories about me with complaints like, I have consumed liquor from village and I have given boxing to Sh.Y.P.Yadav etc. etc.

Sh.S.K.Thapa Offg Coy Comdr checked me and also checked my skull where it was bleeding. Offg Coy Comdr took me and my luggage in his vehicle and left for Coy HQ. After reaching Coy HQ, I was given first Aid in my head.

Then and there only although I had requested to get my medical test done, but Offg Coy Comdr ordered me to go to sleep.

On next day I was sent to Bn HQ Raninagar along with guard in Gypsy. After reaching at Bn HQ I met Adjutant to whom I request for medical treatment. Adjutant send me first to GD for entry etc and then to MI room where Unit medical officer Sh Jajaj Sinha CMO checked me and kept me admitted in hospital for one night and extended the required treatment. Prescription slip of MO is being produced to recording officer as **EXHIBIT-2**

The above statement recorded on total 08 Nos. Pages in continuously, has been read over to the accused in the presence of independent witness No.702980028 Sub Major R.C.Prasad 87 Bn BSF in the language they both understand i.e. Hindi. They both understood it and sign it as correct.

Sd/17.03.04
No.702980028
Sub R.C.Prasad
87 Bn BSF
(INDEPENDENT WITNESS)

Sd 17.03.2004
No.914886321
CT Madan Mohan
'A' Coy 87 Bn BSF
(THE ACCUSED)

*Recorded by me
Sd/17.03.2004
(SATPAL DATT)
DC/RO*

QUESTION TO THE ACCUSED

Q.1 Do you wish to call any witness?

Ans. No, I don't wish to call any witness.

*Sd/17.03.04
No.702980028
Sub R.C.Prasad
87 Bn BSF
(INDEPENDENT WITNESS)*

*Sd 17.03.2004
No.914886321
CT Madan Mohan
'A' Coy 87 Bn BSF
(THE ACCUSED)*

*Recorded by me
Sd/17.03.2004
(SATPAL DATT)
DC/RO*

12. Having noted the evidence recorded in RoE and the manner of cross examination of the witnesses by the petitioner, it is proved that the charges I and II, as framed against the petitioner, are proved, inasmuch as SI Yadav PW 6 has in his deposition has stated the language used by the petitioner. The aforesaid deposition has gone unrebutted as the petitioner has not cross examined him.

13. That apart the testimony of SI Yadav proves the charges III and IV that the petitioner had gone out of BOP to the village Dangapara and he was found in drunken state. Further,

the petitioner has given his statement and has not produced any witness in support of his statement.

14. In so far as the plea of Mr. Malhotra that the proceedings were in English whereas the petitioner only understood Hindi and no endorsement was made to show that he was made to understand the gist of the proceedings in Hindi and no affirming of the interpreter as required by Rules 134 and 136 was carried out is concerned, the pleas does not appeal to us for more than one reason; firstly such pleas were not advanced by the petitioner in the statutory petition addressed to the DG, BSF, secondly, we note the statements recorded from time to time were explained to the petitioner in Hindi and pursuant thereof as contended by the respondents, he has put his signatures. If that be so, the pleas need to be rejected. That apart, it is noted that his statutory petition was in English so also this writ petition. It is not the case of the petitioner that the contents of the same were read and explained to him in Hindi.

15. In so far as the plea of Mr. Malhotra, that the petitioner was not provided with the copies of statement of witnesses is concerned, it is stated by the respondents in their reply to ground-B that the ROE proceedings and charge sheet were supplied to the petitioner well in advance vide letter dated March 27, 2004. This stand of the respondent has not been contradicted by the petitioner except stating '*the petitioner was neither given the copy of the charge sheet nor given an opportunity to defend himself.*' This stand of the petitioner is at variance with the stand in the petition. The petitioner does not refer to the ROE

proceedings at all. This plea is not accepted. We find that the present writ petition is without any merit and the same is dismissed.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

FEBRUARY 20, 2017/ak

