(2012) 05 DEL CK 0608

Delhi High Court

Case No: Writ Petition (C) No. 2715 of 2000

Ex. Head Constable Rajinder Singh		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: May 4, 2012

Acts Referred:

- Army Rules, 1954 - Rule 115(2)
- Border Security Force Act, 1968 - Section 136, 20, 25, 40, 42
- Border Security Force Rules, 1969 - Rule 142, 142(2), 143, 143(4), 158
- Constitution of India, 1950 - Article 20
- Penal Code, 1860 (IPC) - Section 358

Hon'ble Judges: Sudershan Kumar Misra, J; Anil Kumar, J

Bench: Division Bench

Advocate: Anil Gautam, for the Appellant; Barkha Babbar Advocate, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar, J.

The petitioner has sought a writ of certiorari seeking quashing of the SSFC proceedings in which the petitioner had allegedly pleaded guilty and consequently, the SSFC had sentenced the petitioner to be dismissed from service. The petitioner has also sought that he should be reinstated with full back wages and all the consequential benefits and reliefs. The brief facts to comprehend the dispute are that the petitioner had joined the BSF as a constable in the year 1979. As contended by the petitioner around the first week of June in the year 1999, Sh. B.K. Mehta, the Commandant had visited the FDL Uragali of 62 Bn BSF. On the said day, the petitioner was performing the duties of Post Commander at the said FDL which had been taken over from 137 Bn BSD just about 4-5 days back on the change over of the two units.

2. According to the petitioner, since at the time no proper crockery was available at the FDL, Sh. Mehta was offered water in a steel glass kept in a plate, belonging to the Jawans" of the post, where upon Sh. Mehta got infuriated and in a flash of anger had thrown the glass of water and the plate and abused the petitioner in the most filthy language for giving him water from the Jawans" utensils. The petitioner contended that even though he had tried to look after the Commandant in the best possible manner the Commandant was displeased and threatened the petitioner with dire consequences and even said that "Mein Tujhe Sukha Ghar Bhej Dunga". According to the petitioner, the Commandant was on the look out for an opportunity to harass the petitioner which he ultimately achieved by dismissing the petitioner without any pensionary benefits within one month of giving him threats.

3. The petitioner submitted that meanwhile he was given the charge of the stores of the FDL, when Subedar Ram Das had taken over as the Post Commander at FDL "Uragali". The petitioner allegedly came to know that Subedar Ram Das was indulging himself in anti national activities across the Line of Control and used to extort illegal gratification in the form of cash, dry fruits, milk, curd, etc. from the civilians who wanted to go beyond the Line of Control for cattle grazing etc. It is further alleged that the civilians, who could not pay him, were discriminated against and were ill-treated and were also not allowed to go ahead for cattle grazing. The petitioner had objected to the said illegal and corrupt practice on the part of Subedar Ram Das but it did not deter him from continuing doing the same. On 18th June, 1999 at about 1000 hours, some civilians had come to the FDL who intended to go ahead for cattle grazing. Post Commander allowed two of them who had offered him some illegal gratification. According to the petitioner, he had again requested Subedar Ram Das to not follow the said discriminatory and corrupt practice and allow only those civilians who have the valid documents, or else. In these circumstances, the petitioner requested that he be allowed to hand over the charge of the stores to any other officer and that he may be sent to the Company Headquarters, as his conscience did not permit him to stay. Consequently, Subedar Ram Das told the petitioner to hand over the charge of the stores to HC Prabhu Dayal, which was duly done at 1300 hours when HC Prabhu Dayal had returned from the patrolling duty.

4. Thereafter, the petitioner contended that at about 1945 hours, while the petitioner was standing near the cook house, Subedar Ram Das, who was under the influence of liquor, came there and asked the petitioner as to why he intended to hand over the charge of the stores. When the petitioner told him the reason being that he did not like Subedar Ram Dass taking illegal remuneration from the said civilians, who wanted to cross the Line of Control, Subedar Ram Das started abusing the petitioner in the filthiest language and also slapped the petitioner. The petitioner requested him to stop, however, he continued with the misconduct and even filthily abused petitioner''s daughter. At this point, due to the heat of the moment, the petitioner asked Subedar Ram Das to stop abusing and beating him by

saying "enough is enough" and then he also tried to pick up a pebble lying nearby in a fit of rage. In the meantime, the other personnel who had assembled there took away both the petitioner and Subedar Ram Das and prevented the petitioner from picking and throwing anything on the Post Commander Subedar Ram Das.

5. According to the petitioner, he had neither thrown any stone towards Subedar Ram Das, nor had he gestured or done any such act towards the Post Commander which could be construed as any misconduct on his part consider what was done by the Post Commander. However, Subedar Ram Das, thereafter, narrated a one sided, concocted story to Sh. B. K. Mehta, Commandant, who readily believed the version of Subedar Ram Das, which according to the petitioner was on account of the earlier incident recounted above as the Commandant wanted to take action against the petitioner.

6. The Commandant, therefore ordered an ROE against the petitioner on 22nd June, 1999 and a charge sheet of the same date was issued as well. Thereafter, the petitioner was tried by the SSFC on 3rd July, 1999, where it was recorded that the petitioner had pleaded guilty, and after filling some papers the petitioner was dismissed from service. The petitioner, thereafter, submitted a statutory petition to the Director General, BSF on 29th September, 1999 contending, inter alia, that the mandatory provisions of Rule 45 of the BSF Act were not complied with by the Commandant; ROE was conducted according to the rules; that the petitioner had not pleaded guilty which has been falsely depicted as guilty by the Commandant in the SSFC Trial proceedings; that the petitioner had been made to march before the Commandant on 3rd July, 1999 and he was told that he has been dismissed from the service; that even if it is accepted that the petitioner had pleaded "guilty" then the Commandant ought not to have accepted it and should have instead proceeded with the trial in terms of BSF Rules 142 and 143(4)(a), as if the petitioner had pleaded "not guilty"; that merely the cyclostyled/typed proforma of the SSFC trial which is circulated to all the units of BSF Headquarters was filled in with the name & number of the accused/petitioner, and he was dismissed from service without complying with the mandatory provision of Rules; that the eyewitnesses Ct. Shyam Sunder Prasad (PW-3), Ct. Yesu Das (PW-6) and Ct. Kanu Bhai (PW-7) had categorically stated that Subedar Ram Das was abusing the petitioner in Punjabi and had also slapped him. They had also stated that the petitioner had not thrown stone on Subedar Ram Dass and there was no evidence before the SSFC except the alleged "plea of guilty" which was also not signed by the petitioner, as he had not pleaded guilty.

7. The Director General, however, rejected the petition of the petitioner by order dated 12th January, 2000. It is against the order of dismissal dated 3rd July, 1999 and the rejection of the statutory petition by order dated 12th January, 2000 that the petitioner had preferred the above noted writ petition before this Court. The petitioner has mostly reiterated the pleas and contentions raised in the statutory petition and has contended, inter alia, that no action has been taken against

Subedar Ram Das for ill-treating the petitioner u/s 25 of the BSF Act and abusing him and his daughter and being under the influence of alcohol while on duty. The petitioner also contended that the mandatory provisions of Rule 45 were not complied with by the Commandant before ordering the ROE.

8. The petitioner has further asserted that he had not pleaded "guilty" as has been falsely depicted by the Commandant in the SSFC proceedings and that, in fact, no factual trial had taken place except making the petitioner march before the Commandant and he was told that he has been dismissed and some type papers were filled in. The petitioner was contended that the mandatory requirement of Rules 142 and 143 were not complied with and nothing was explained to him. According to the petitioner, even if it is assumed that the petitioner had pleaded "guilty" still the Commandant ought to have complied with the provisions of Rules 142 and 143(4)(a) of the BSF Act, as if the petitioner had pleaded "not guilty" in view of the record before the Commandant and in the facts and circumstances, and the stand of the petitioner about Subedar Ram Dass under the influence of liquor abused him and his daughter, and that he had been taking illegal gratification for civilians for allowing them to indulge in illegal activities.

9. The petitioner also categorically asserted that Subedar Ram Das was in the habit of abusing and quarreling with the sub-ordinates under the influence of alcohol and a number of similar incidents had earlier taken place in which he had beaten and abused and ill treated the sub-ordinates.

10. It has also been contended that Constable Rakesh Kumar had been deliberately not examined in order to favour Subedar Ram Das as his statement would have exposed the falsity of Subedar Ram Das"s version. The petitioner also urged that there is no evidence to support of his conviction and that not only had the Commandant Sh. Mehta already nurse a grudge against the petitioner, but also no action was taken against Subedar Ram Das as he had wanted to keep him in good humor since he was a witness in a case against the Commandant.

11. The petitioner further contended that even if the respondents" version is believed to be true, the charge against the petitioner was wrongly framed u/s 20(a) of the BSF Act, instead of Section 358 of the IPC read with Section 46 of the BSF Act, which was done only with the intention of the Commandant to assume the jurisdiction to try the petitioner by circumventing the provisions of Section 74(2) BSF Act and Rule 158.

12. The petitioner also contended that the chargesheet contained two charges on the same transaction/incident and the petitioner was convicted of both. According to the petitioner, the Commandant had deliberately framed two charges to make the incident look more grievous and thus the chargesheet ought to be quashed solely on the ground that it contains multiplicity of charges and the petitioner has in effect been punished twice for the same offence. It had also been alleged that the

Commandant had not taken oath in compliance with the requirement of the rules, who was also the Interpreter, and thus Section 136 of the BSF Act was not complied with which is apparent from the record of the SSFC trial proceedings.

13. The petitioner has further contended that the punishment imposed on him is grossly disproportionate to the offence alleged against him, and that the Commandant failed to consider that the petitioner has an unblemished record of service and that he had rendered 20 years of service without any complaints against him.

14. It is also contended on behalf of the petitioner that his statutory petition was rejected by the Directed General arbitrarily and without any application of mind by an unreasoned, non-speaking and bald order dated 12th December, 2000.

15. The pleas and contentions of the petitioner have been refuted by the respondent who filed a counter affidavit dated 29th September, 2000. The respondents have contended, inter alia, that on 18th June, 1999 the petitioner was deployed at FDL Uragali under Post Commander Subedar Ram Das. According to the respondents, if indeed as per the petitioner Subedar Ram Das was accepting dry fruits, gifts, etc. from Bakrawals then he should have complained about the same to the appropriate authority before the alleged incident had occasioned on the night of 18th June, 1999. It is also urged that no evidence either during the ROE or the SSFC Trial had been established in support of the allegations imputed by the petitioner and that, in fact, it was found that thorough checking of the Bakrawalas including their valid papers were carried out by the Post Commander/Detailed personnel wherever applicable in view of Security environment/activities.

16. It is also contended that on 18th June, 1999 the petitioner had come to the cook house at about 1945 hours and started making allegations against the Subedar Ram Das that he was in the habit of taking free milk, dry fruits, etc. from civilians for allowing them to graze their cattle in the company responsible area. When Subedar Ram Das reached at the spot for controlling the situation, the petitioner started abusing, as well as manhandling Subedar Ram Das due to which reason even the button on his shirt had broken. After some time, the petitioner allegedly also picked up a stone and threw it at Subedar Ram Das, but fortunately, Subedar Ram Das avoided the same due to his timely reflex action. Thereafter, the petitioner was taken away from the spot and kept in the Bunker by bolting the door from outside. A Record of Evidence was ordered and based on the evidence on record, the petitioner was charged for committing the offences u/s 20(a) and 40 of the BSF Act. For the offences committed by the petitioner, he was subsequently tried by a Summary Security Force Court, during which the petitioner had pleaded "Guilty" to both the charges framed against him and consequently, the Court had sentenced the petitioner to be dismissed from the service.

17. It is asserted that if indeed the petitioner was innocent then he should have pleaded "not guilty", however from the SSFC proceedings on record it is clear that the petitioner had pleaded "guilty" and had, in fact, insisted that since he had put in 20 years of service, a lenient view may be taken against him. According to the petitioner, the SSFC did take a lenient view as the conjoint reading of the provisions of Section 20 and Section 42 of the BSF Act would indicate that the petitioner was liable to suffer seven years of imprisonment for the offences committed by him, however the SSFC only sentenced the petitioner to be dismissed from the service.

18. Regarding the contention of multiplicity of charges, with the intention of making the incident look more grievous than what it actually was, the respondents have averred that both the charges framed against the petitioner constitute two serious offences committed by the petitioner against his superior. While the first charge stipulates that the petitioner at FDL Uragali on 18th June, 1999 at about 1945 hours had picked up stones and threw it at Subedar Ram Das, while the second charge stipulates that on 18th June, 1999 at about 1945 hours the petitioner had quarreled and manhandled Subedar Ram Das. It was further asserted that as per the depositions of PW-5, Const. Shyam Sunder Prasad and PW-2 Constable Prabhu Dayal it is clear that the petitioner had picked up a stone and thrown it at Subedar Ram Das, but it hadn"t caused any injury because the latter had ducked. Thus, it is urged that the offence u/s 20 of the BSF Act i.e. "attempt to use criminal force to his superior officer" has been established against the petitioner and substantially supported by the evidence on record.

19. With regard to the allegations imputed against the Commandant Sh. B. K. Mehta, by the petitioner in reference to his visit to Uragali in May, 1999 the respondents have contended that the said allegations have not been substantiated and are baseless and false since at the time when the Commandant Sh. B. K. Mehta had gone to visit the FDL Uragali, it was found that the petitioner inspite of being the Post Commander, neither ensured a proper stand, nor was he in proper uniform, for which reason he was told on the spot to maintain discipline of the force in future.

20. Learned counsel for the respondents had also contended that the petitioner was enlisted in the BSF as a constable on 9th March, 1979 and was subsequently promoted to the rank of Head Constable as per his turn after qualifying the respective Cadre/ Courses and not based on his excellent performance. Even though the petitioner was promoted to the rank of HC, it is pointed out that his performance in the force had not been very satisfactory and that he had been tried summarily for committing various offences and awarded punishments on six occasions prior to the Summary Security Force Court held on 3rd July, 1999, whereby the petitioner was dismissed from the service. The details of the offences committed earlier and the punishment awarded have been detailed in the counter affidavit which included severe reprimand and imprisonment on one occasion.

21. According to the learned counsel for the respondents, the procedure as prescribed under the BSF Act and Rules had been duly complied with and thus the sentence of the petitioner be upheld by this Court.

22. The pleas and contentions raised by the respondents have been denied by the petitioner by filing the rejoinder affidavit dated 7th February, 2001. The petitioner has asserted that he did not plead guilty during the trial proceedings, which is evident from the fact that it does not bear any signatures of the petitioner and it is asserted that the fact that he pleaded guilty can only be accepted, if the petitioner''s acceptance admitting to all the ingredients of the charges had been recorded verbatim rather than merely recording the word "guilty" which itself cannot be treated as a valid plea of "guilty". It is also contended that the SSFC had only relied on the statement of Subedar Ram Das, while the evidence of the other prosecution witnesses were not considered.

23. With respect to the punishments awarded to the petitioner on earlier occasions, the petitioner has contended that the said minor punishments are to be considered viz-a-viz the rewards given for the good work done and the promotions earned from time to time.

24. Learned counsel for the petitioner relied on the plea that the petitioner had not pleaded guilty as the "plea of the guilty" is not signed by the petitioner. Reliance was placed by learned counsel for the petitioner on Ex. L/NK Vimal Kumar Singh Vs. Union of India (UOI) and Others, ,Vimal Kumar Singh (Ex.L/NK) v. Union of India & Ors. Balwinder Singh Vs. Union of India (UOI) and Others, ; Mr. Banwari Lal Yadav Vs. Union of India (UOI) and Another, W.P.(C) No.14098/2009, Ex. Constable Vijender Singh v. Union of India & Ors., decided on 1st October, 2010; 152 (2008) DLT 611, Subedarhash Chander (Ex. Naik) v. Union of India & Ors.; LPA 254/2001, The Chief of Army Staff & Ors. v. Ex. K. Sigmma Trilochan Behera; 1989 (3) SLR 405, Mahender Singh (Ex. Const) Vs. Union of India (UOI) and Others, Mahender Singh (Ex. Constable) v. Union of India & Ors., in support of the pleas and contentions raised on behalf of the petitioner that the alleged "plea of guilty" by the petitioner cannot be accepted and the whole SSFC proceedings are vitiated.

25. Learned counsel for the respondents has relied on Chokha Ram Vs. Union of India (UOI) and Another, , W.P.(C) 3436/1996 decided on 27th July, 2011 and W.P.(C) No.4997/1998, Kalu Ram v. Union of India & Ors., decided on 3rd August, 2011 to contend that the " plea of guilty" was not required to be signed and the SSFC proceedings cannot be vitiated on account of not signing the "plea of guilty" by the petitioner, nor it can be inferred that the petitioner had not pleaded guilty.

26. This Court has heard the learned counsel for the parties in detail and has also perused the writ petition, the counter affidavit and the rejoinder along with all the documents appended to them and the judgments relied on and referred to by the learned counsel for the parties. The respondents had also produced the original

record of the SSFC which has also been perused by this Court. The Charges framed in the SSFC against the petitioner were as under:

FIRST CHARGE		
FDL URAGALI FORCE TO HIS 18.6.99	BSF ACT SEC-20(a)	ATTEMPT TO USE CRIMINAL SUPERIOR OFFICER
	In that he, At FDL Uragali on 18.6.99 at about 1945 hrs picked up stones and threw at Uragali Post Comdr No.68433037 Sub Ram Das with the intention of causing grievous injury to Sub Ram Das.	
SECOND CHARGE		
FDL URAGALI ORDER AND 18.6.99	BSF ACT SEC-40	AN ACT PREJUDICIAL TO GOOD DISCIPLINE OF THE FORCE
	In that he, At FDL Uragali on 18.6.99 at about 1945 hrs quarreled and picked up stones and threw at Uragali Post Comdr No.68433037 Sub Ram Das with the intention of causing grievous injury to Sub Ram Das.	

27. Thereafter, the plea of guilty was recorded on a cyclostyled/typed sheet. A scanned copy of the original record of plea of guilty and the alleged compliance of Rule 142 & 143 as recorded in the SSFC is as under:

28. Few relevant facts which emerge from the original record of the SSFC are that the "plea of guilty" is recorded at page number 32 of the SSFC record. It is a pre typed page where the particulars of the petitioner had been filled in. Underneath, the plea of "guilty" the alleged compliance of Rule 142 and 143 is recorded in the handwriting of a person other than the petitioner. It is also pertinent to note that the plea of "guilty" is not signed by the petitioner. After the petitioner allegedly pleaded guilty, it is written that the Court read and explained the meaning of the charge, the effect of the petitioner pleading guilty and the difference in the procedure which will be followed since the petitioner had pleaded guilty to the charge. The Court, therefore, had satisfied itself that the petitioner understood the charge and the plea of guilty, particularly in relation to the difference in procedure that followed and thus it is stipulated that the provision of BSF rule 142 (2) has been complied with. Though it is written that the charge sheet was translated and explained to the petitioner, but it is not specified that the plea of guilty and the alleged compliance of Rule 142 as recorded in English was also translated or not and

explained to the petitioner. If it is not so written, the only inference that can be drawn is that it was not done.

29. The plea of guilty is recorded on page 34, whereas, the proceedings on the plea of guilty is recorded on page 32. The pagination of the SSFC are in ascending order and thus earlier proceedings should have been on earlier pages. In the normal course of a trial the "proceedings on the plea of guilty" should have succeeded the page containing the plea of guilty. However, from the record it appears that the Court proceedings were recorded even before the "plea of guilty" was recorded or that the cyclostyled/typed pages were filled up subsequently and, therefore, there is reasonable doubt that the entire SSFC proceedings were really conducted. It reasonably appears to have been fabricated by the commandant. No rational explanation has been given as to how the proceedings of the earlier date will come on the subsequent page when the record is in the ascending order.

30. The SSFC had allegedly put a question to the petitioner, whether he wishes to make any statement in reference to the charge or in mitigation of the punishment. This question was put in English. It is not recorded that it was explained to the accused in the language which he understood, i.e. Hindi. The answer of the accused has also been written in English. Even this alleged statement of the petitioner is not signed by him.

31. Similarly another question had been put to him in English, whether he wishes to call any witnesses as to the Character. The answer has been recorded as '' no". This too has not been endorsed by the petitioner by way of his signature.

32. Thus, the proceedings, the scanned images of which are reproduced hereinabove, creates reasonable doubt about the version of the respondents that the petitioner had pleaded guilty and that plea of guilty was recorded in compliance with requirements of Rules 142 and 143 of the BSF Rules. Rather the perusal of the proceedings substantiate the version of the petitioner that the cyclostyled/ pre-typed pages were filled in by the Commandant himself, and that the petitioner was merely called to the Commandant"s chamber on the date SSFC was allegedly conducted, and he was told that he has been dismissed from the service. It is apparent that in these facts and circumstances he had not pleaded guilty and that the entire SSFC proceedings are vitiated.

33. The Courts have laid down time and again the requirement of signing the plea of guilty by the accused in the SSFC proceedings of the BSF and other Forces including the Army, as the rules of BSF are pari materia with the rules of Army in this regard. In Uma Shankar Pathak (supra), a Division Bench of the Allahabad High Court while dealing with Rule 115 (2) of Army Rules, 1954 regarding the plea of guilty which is pari materia with the BSF Rule 142 had held that the bald certificate given by the Commanding Officer stating that the provision of Army Rule 115(2) are complied with, is not sufficient and enough. It was held that 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 the meaning of the charge and made him aware of the difference of procedure. The Division Bench of Allahabad High Court had further held that the rule further contemplates that the accused person should be fully forewarned about the implication of the charge and the effect of pleading guilty. The procedure prescribed for trial of cases where the accused pleads "guilty" is radically different from that prescribed for trial of cases where the accused pleads "not guilty". According to the Court, the procedure in cases where the plea is of "not guilty" is far more elaborate than in cases where the accused pleads "guilty". The Court had held that in view of the Rule 115 (2) of the Army Rules, the question and answer put to the accused are to be reproduced by the Court in their entirety and should be recorded verbatim. This was not done in the case of Uma Shankar Pathak, instead the Summary Court Martial had merely satisfied itself with the certificate that stated that the "provision of Army Rule 115 (2) was complied with". In the facts and circumstances, the High Court had set aside the order and sentence passed by the Summary Court Martial and quashed the same and the charged officer was reinstated with all monetary and service benefits and he was also awarded the cost of the petition. The High Court had held as under:

10. The provision embodies a wholesome provision which is clearly designed to ensure that an accused person should be fully forewarned about the implications of the charge and the effect of pleading guilty. The procedure prescribed for the trial of cases where the accused pleads guilty is radically different from that prescribed for trial of cases where the accused pleads "not guilty". The procedure in cases where the plea is of "not guilty" is far more elaborate than in cases where the accused pleads "guilty". This is apparent from a comparison of the procedure laid down for these two classes of cases. It is in order to save a simple, unsuspecting and ignorant accused person from the effect of pleading guilty to the charge without being fully conscious of the nature thereof and the implications and general effect of that plea, that the framers of the rule have insisted that the Court must ascertain that the accused fully understands the nature of the charge and the implications of pleadings guilty to the same.

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 Rule 115(2) are here complied with.

34. Learned counsel for the respondents has relied on Kalu Ram (supra), the decision of the Division Bench in WP(C) 4997/1998, decided on 3rd August, 2011. In the said case, the allegation against the member of the force was that he committed an offence punishable u/s 40 of the BSF Act. He was tried by the SSFC and was

awarded the sentence of dismissal from service. The member of the force, a Constable with BSF was attached with 84 Bn deployed at BOP Malda Khan and he was detailed to perform Naka duty at Naka No.3. During the course of the duty, the said constable went to Village Dhaul and consumed liquor and while returning he fought with another constable and he allegedly fired a shot in the air from a self loaded Rifle issued to him. Record of evidence was prepared in which 8 witnesses were examined. After considering the record of the evidence, the Commandant had ordered convening of the Summary Security Force Court (SSFC) to try the said constable. During the trial, Kalu Ram, the constable allegedly pleaded guilty to the charges framed against him, and after complying with Rule 142 of BSF Rules, 1969, the SSFC recorded that the "plea of guilty" was admitted by the said constable and by order dated 7th October, 1997 he was convicted. The said constable was dismissed from service by the SSFC taking into consideration that he had been convicted earlier five times for various offences and that his general character was found to be unsatisfactory. The petitioner, Kalu Ram, assailed the findings of the SSFC on the ground that he had not pleaded guilty but the "plea of guilty" was allegedly taken from him. It was asserted that the "plea of guilty" was vitiated as the documents incorporating/containing the "plea of guilty" did not bear his signatures and, therefore, ultimately the findings of the SSFC stood vitiated. A Division Bench of this Court referred to Vimal Kumar Singh (Ex.L/NK) Vs. Union of India & Ors.; Subhash Chander (Ex. Naik) Vs. Union of India & Ors. and Chokha Ram Vs. Union of India & Anr. and had held that in view of the legal position in these cases, it could not be universally laid down that the "plea of guilty" taken from the charged officer will stand vitiated in every case where the document containing the plea of guilty of charged officer does not bear his signatures. In para 21 & 22 of the Kalu Ram (supra), the Division Bench of this Court had held as under:-

21. In the decisions reported as Ex. L/NK Vimal Kumar Singh Vs. Union of India (UOI) and Others, and Ex. Naik Subhash Chander Vs. Union of India (UOI) and Others the plea of guilt taken by the petitioners therein was held to be vitiated as the document containing the plea of guilt of the petitioners did not bear the signatures of the petitioners. On the other hand in the decisions reported as Chokha Ram Vs. Union of India (UOI) and Another, and Diwan Bhai Vs. Union of India and Others it was held that plea of guilt taken by the petitioner therein cannot be held to be vitiated on the ground that the containing the plea of guilt of the petitioners does not bear the signatures of the petitioners when there is no specific legal requirement to obtain signatures of a charged officer on the plea of guilt taken by him.

22. In view of the above legal position, it cannot be universally laid down that the plea of guilt taken by a charged officer would stand vitiated in every case where the document containing the plea of guilt of the charged officer does not bear the signatures of the charged officer. What would be the effect of non-bearing of signatures of the charged officer in document containing the plea of guilt by him on the veracity of the plea of guilt taken by him depends on facts and circumstances of

each case.

35. Learned counsel for the respondents had also relied on Ex. Constable Ram Pal (supra), in support of the plea on behalf of the respondents that even if the punishment awarded by the SSFC is set aside on the ground that the "plea of guilty" was not signed by the petitioner, then in that case the respondents should be permitted to try the petitioner afresh.

36. Perusal of the said decision of Ex. Constable Ram Pal (supra) in WP(C) 3436/1996 decided on 27th July, 2011, however, reveals that the same Division Bench which had held in the case of Kalu Ram (supra) that it cannot be universally laid down that "plea of guilty" taken from a charged officer will not stand vitiated in every case where the documents containing the "plea of guilt" of the charged officer does not bear the signatures of the charged officer, had held in the case of the Ex. Constable Ram Pal (supra) that if a charged officer pleads guilty to the charges, the least that is required to be done is to obtain the signatures of the accused under the "plea of guilty", as in such circumstances this is the only evidence on the basis of which a charged officer is convicted. Relying on Subhash Chander (Ex. Naik) v. Union of India & Ors., 152 (2008) DLT 611, the same Division Bench had held that not signing the "plea of guilty" by the charged officer was a fundamental error and consequently the conviction of the charged officer by the SSFC was set aside. The said Division Bench of this Court in Ex. Constable Ram Pal (supra) had held in para 18, 19 and 20 as under:-

18. The original record produced before us shows that it has been recorded that when the indictment was read at the trial the petitioner pleaded guilty. But we find that the petitioner has not signed the plea of guilt. Now, if a person pleads guilty to a charge, the least what is required to be done is to obtain the signatures of the accused under the plea of guilt, for the reason this was to be the only evidence, if there is a dispute, whether or not the accused pleaded guilty.

19. In a similar situation noting that the plea of guilt was sans the signatures of the accused, in the judgment reported as 2008 (152) DLT611, Subhash Chander Vs. Union of India & Ors., the conviction and punishment based upon the plea of guilt was negated. It was held that it would be permissible to try the accused at a re-convened Summary Security Force Court.

20. Since we have found a fundamental error, we do not deal with the issues whether at all the petitioner was given adequate time to defend himself at the trial or whether or not he was given an opportunity to engage a defence assistant, for the reason all these were to be irrelevant once we hold that the petitioner needs to be re-tried.

37. Thus the same Co-ordinate Bench which had decided the Kalu Ram (supra), on which reliance has been placed emphatically by the respondents had not considered its earlier judgment in the matter of Ex. Constable Ram Pal (supra) wherein it was

held that if a person pleads guilty to a charge, the least that is required to be done is to obtain the signatures of the accused under the "plea of guilty". Even in Kalu Ram (supra) the reasoning that the "plea of guilty" need not be signed was not held conclusively, since the said writ petition was dismissed in default. The reasoning in the Kalu Ram (supra) given by the Division Bench, thus, will not be conclusive and binding, as the same Division Bench did not consider its earlier findings and reasoning in the case of Ex. Constable Ram Pal (supra), nor was any reason given to differ with the diametrically opposite reasoning and inferences given in Ex. Constable Ram Pal (supra). The findings of the Division Bench in the case of Kalu Ram (supra) will also be not conclusive for the reason that the case of Kalu Ram (supra) was not conclusively decided by the said Bench and the observations were made on the premise that the writ petition may be restored by Kalu Ram, as the writ petition was decided not on merits, but was dismissed in default of appearance of Kalu Ram and his counsel and in that case the Division Bench may recollect as to what was held by it. In para 25 of the said decision of Kalu Ram (supra) the Division Bench had held as under:-

25. Be that as it may, since none appears for the petitioner at the hearing today, we dismiss the writ petition in default, but have troubled ourselves to record as above since we had spent time reading the file in chamber and do not wish our labour to be lost should the writ petition be restored at the asking of the petitioner.

38. Therefore, reliance cannot be placed by the respondents on Kalu Ram (supra) to contend that even if the "plea of guilty" is not signed by accused before the SSFC, the punishment awarded by the SSFC shall not be vitiated.

39. From the facts of this case it cannot be inferred that the petitioner had pleaded guilty. Both the charges framed against the petitioner are also in substance with regard to the same offence. From the statements of PW-6 Yesu Das, PW-5 Shyam Sunder and PW-7 CT Kanu Bhai made in the ROE it is clear that when the petitioner had made the allegation that Subedar Ram Das was involved in illegal activities, he had denied the same and abused the petitioner in Punjabi and also slapped him. The petitioner had also made a categorical grievance that the Commandant favoured the Post Commander as the Post Commander was a witness in support of the Commandant in a case pending against him. No affidavit of the Commandant has been filed denying that the Post Commander, Subedar Ram Das was not a witness in any case pending against him. In this background, it is not unreasonable to infer that the petitioner would not have pleaded guilty. In these circumstances it was also incumbent upon the Commandant to record as to how he had complied with the requirement of the BSF Rules 142 and 143 than merely stating that the ramification of pleading guilty by the petitioner was explained to him. In the entirety of these facts and circumstances as detailed hereinbefore it is apparent that the petitioner was called by the Commandant and dismissed from the service, and the proceedings of the SSFC were filled in the typed papers.

40. Though in Chokha Ram (supra) another Division Bench had held that the "plea of guilty" will not be vitiated for not bearing the signatures of the accused, however, the other Division Benches of this Court in the cases of Ex. Constable Ram Pal (supra); Ex. K. Sigmma Trilochan Behera and Vimal Kumar Singh (supra) relied on Laxman (Ex. Ract.) v. Union of India & Ors., 103 (2003) DLT 604 and Uma Shankar Pathak v. Union of India & Ors., 1989 (3) SLR 405; Balwinder Singh Vs. Union of India (UOI) and Others, 152 (2008) DLT 611 and in Mahender Singh (Ex. Const) Vs. Union of India (UOI) and Others, has consistently held that the "plea of guilty" recorded on printed or types form and not signed by the accused cannot be accepted and shall vitiate the proceedings of the SSFC and any punishment awarded pursuant to such "plea of guilty" by the SSFC will also be not sustainable. In Mahender Singh (supra) another Division Bench of this Court rather held that it is desirable for DG BSF to frame guidelines on parity with Army issuing specific instructions in respect of the manner of recording the " plea of guilty". The Division Bench had held as under in para 12 of said judgment:

We may also note that it is desirable that the Director General, BSF, on parity of the guidelines of the Army should issue instructions in respect of the manner of recording the " plea of guilty" because of serious consequences which arise in such cases as also the environment in which the personnel are tried. The object is to ensure that both in letter and spirit the mandate of the Rule is complied with and the accused person is fully conscious of the consequences of pleading guilty.

41. The learned counsel for the petitioner contended that pursuant to the above direction in the above noted case, guidelines also have been issued by the respondents and implemented which fact has not been denied by the learned counsel for the respondents.

42. Thus, reliance cannot be placed on the decision of the Division Bench in case of Chokha Ram (supra) as the said Bench had not considered the decision of Uma Shankar Pathak (supra) and because the other Co-ordinate Benches too have not followed the alleged ratio of Chokha Ram in their subsequent decisions. Another distinguishable feature of Chokha Ram (supra) is that the delinquent, Chokha Ram had not only pleaded guilty before the SSFC but during the course of recording of evidence i.e. during the ROE, he had also made a statement admitting his guilt. It was held that the plea of guilty in the ROE could be used as an evidence against him in the SSFC trial and that weighed upon the Division Bench while holding that even if before the SSFC the plea of guilty was not signed by the delinquent member of the force, the same can be accepted as there was evidence in support of the same, i.e. the statement of the delinquent before the ROE admitting his guilt. In the circumstances, in Chokha Ram (supra) the Court did not lay down an absolute proposition that the "plea of guilty" before the SSFC under Rule 142 of the BSF Rules need not to be signed before it can be relied on. Rather the said opinion was formed in the backdrop of the peculiar facts and circumstances of Chokha Ram (supra). It is

no more res integra that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the factual situation and circumstances in two cases. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr. (AIR 2004 SC 778) had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid''s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , the Supreme Court had held as under:

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases. In Rafiq Vs. State of U.P., it was observed as under: "The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.

43. What emerges from above is that in the above noted matters the Division Benches of this Court have consistently held that if the "plea of guilty" is not signed by the delinquent, then it cannot be accepted and acted upon, and the proceedings of the SSFC based on such plea of guilty shall be vitiated and the punishment awarded pursuant thereto, is also liable to be quashed.

44. Consequently, for the foregoing reasons and in the facts and circumstances of the above case, it cannot be accepted that the petitioner had accepted his guilt before the SSFC, as the "plea of guilty" was not signed by the petitioner, Rajinder Singh, and there have been other violations of Rules 142 and 143 of BSF Rules, 1969 so as to vitiate the punishment of dismissal from service awarded by the

respondents, pursuant to the plea that the petitioner had pleaded "Guilty" of the charge framed against him. Resultantly, the order of the SSFC dated 5th July, 1999 is set aside and the petitioner is entitled for reinstatement forthwith with all the back wages and consequential benefits including promotion and the period from the date of his dismissal up till the date of his reinstatement is to be counted for all purposes in favour of the petitioner.

45. The next contention on behalf of the respondents is that even if the petitioner''s punishment by the SSFC dated 5th July, 1999 is set aside on the ground that the "plea of the guilty" by the petitioner could not be accepted as it was not signed by him and there was no other evidence showing that the petitioner had pleaded guilty, the respondents will be entitled to try the petitioner afresh on the charges framed against him.

46. In support of this contention by the respondents for a fresh trial, reliance has been placed by the respondents on Ex. Constable Ram Pal (supra). The learned counsel for the respondents Ms. Barkha Babbar has contended that in Ex. Constable Ram Pal (supra), a Division Bench had permitted the respondents to try the delinquent afresh and therefore, this Court should permit the respondents to try the petitioner afresh.

47. Perusal of the decision of Ex. Constable Ram Pal (supra) reveals that no reasons have been given by the Division Bench to permit the respondents to try the delinquent afresh except holding without giving any reason that the respondents shall be entitled to try the delinquent afresh in para 21 of the said judgment. In para 21 and 22 of Ex. Constable Ram Pal (supra) the said Division Bench had held as under:-

21. Accordingly, we disposed of the writ petition quashing the order dismissing the petitioner from service as also the petitioner''s conviction at the Summary Security Force Court. We permit the department to try the petitioner afresh. We leave it open to the competent authority to determine as to in what manner the period post levy of penalty of dismissal from service till petitioner reinstatement pending trial would be reckoned.

22. The petitioner would be reinstated forthwith.

48. The learned counsel for the petitioner has refuted this contention of the respondents and has contended that the trial of the petitioner by the SSFC has not been set aside on account of the inherent lack of jurisdiction but because the trial was unsatisfactory. He asserted that keeping in view the embargo u/s 75 and Article 20 of the Constitution of India, fresh trial of the petitioner shall not be permissible. Reliance has also been placed by the learned counsel for the petitioner on Mr. Banwari Lal Yadav Vs. Union of India (UOI) and Another,

49. This cannot be disputed by the respondents that the SSFC, which tried the petitioner and punished him with dismissal from service on 5th July, 1999, was competent to try the petitioner and the Security Force Court did not lack the jurisdiction to try him. However, in the facts and circumstances, what emerges is that the proceedings of the SSFC were not satisfactory as there was no evidence except the reliance of the Court on the alleged "plea of guilty" by the petitioner which has not been accepted and has already been set aside by this Court. In the circumstances, the trial of the petitioner will not be non est being null and void from its very inception as the SSFC had the jurisdiction to try the petition, however in the circumstances, since the petitioner had withstood trial which has been vitiated on account of trial being unsatisfactory, the petitioner cannot be tried again. Therefore, the respondents cannot be permitted to try the petitioner again.

50. Section 75 of BSF Act categorically prohibits a second trial. Section 75 of the BSF Act is as under:-

"75. Prohibition of second trial: (1) When any person subject to this Act has been acquitted or convicted of any offence by a Security Force Court or by a criminal court or has been dealt with u/s 53 or u/s 55 he shall not be liable to be tried again for the same offence by a Security Force Court or dealt with under the said sections.

(2) When any person, subject to this Act, has been acquitted or convicted of an offence by a Security Force Court or has been dealt with u/s 53 or Section 55, he shall not be liable to be tried again by a criminal court for the same offence or on the same facts.

51. In Banwari Lal Yadav (supra), a Division Bench of this Court relied and considered the ratios of the cases in Civil Rule No.3236 (Writ Petition)/73, AIR 1945 16 (Federal Court); AIR 1949 264 (Privy Council); Baij Nath Prasad Tripathi Vs. The State of Bhopal, State of Karnataka through CBI Vs. C. Nagarajaswamy, and State of Goa Vs. Babu Thomas, and had held that there is distinction between the cases where the Court has no jurisdiction to try the offence and where the trial ipso facto is unsatisfactory. It was held that where the Court has no jurisdiction, a delinquent can be tried again. However, if the trial is vitiated on account of it being unsatisfactory, the delinquent or the accused cannot be tried again. In para 13 of the said judgment the Court had held as under:-

13. In our considered view, there is a clear distinction, albeit a fine one, between cases where a court has no jurisdiction to try the offence, as for example, if the court is not competent to try the offence for want of sanction for prosecuting the accused or if the composition of the court is not proper as required for that type of court or if the court is illegally constituted of unqualified officers, and cases where the trial ipso facto is unsatisfactory as for example if during the course of the trial, inadmissible evidence is admitted or admissible evidence is shut out or proper procedure is not followed and the trial is consequently marred by grave irregularities which operate

to the prejudice of the accused. In the former category of cases the trial would be no nest, being null and void from its very inception. In other words, there would be no trial in the eyes of law. In the latter category of cases, however, in our view, it would be deemed that the accused has withstood the trial and as such he cannot be tried again.

52. The Court had held that de novo trial cannot be initiated in cases where the trial was initiated before a competent Court vested with jurisdiction to conduct the trial, however, where subsequently the trial was vitiated on account of procedural or other grave irregularity committed in the conduct of the trial.

53. In Banwari Lal Yadav (supra) relied on by the petitioner, the accused had allegedly pleaded guilty to the charges in his statement for mitigation of sentence where he had stated that his mental condition was not proper. It was held that keeping in view the said statement of the accused, the Court would have been well advised to alter the plea of "guilty" of the petitioner to "not guilty" and the Court having not done so, the proceedings were vitiated under Rule 143 (4) of the BSF Rules. This was also upheld in this case by the Appellate Authority.

54. Considering the object and intent of Section 75 of BSF Act which clearly prohibits the second trial of the accused, it was held that the second trial was not permitted. The Court in para 21, 22, 23 and 24 of the said judgment had held as under:-

21. Keeping in view the aforesaid position of law, we are of the considered view that the question as to whether a fresh trial or de-novo trial can be initiated against the accused would depend upon the reason for the setting aside of the earlier trial. There are clearly two kinds of cases (1) where the earlier trial was void ab initio in the eyes of law having been initiated by a court inherently lacking in jurisdiction to conduct the trial to which reference has been made hereinabove and (2) where the trial was initiated before a competent court vested with jurisdiction to conduct the trial, but subsequently the trial was vitiated on account of procedural or other grave irregularity committed in the conduct of the trial. The present case is clearly a case of the second type where the conviction is quashed not for want of inherent jurisdiction in the court, but because the trial was unsatisfactorily conducted. The petitioner who had earlier pleaded guilty to the charge, in his statement for mitigation of sentence stated that his mental condition was not proper and, therefore, the offence committed by him had been intentionally committed. Keeping in view the said statement of the petitioner and the provisions of Rule 143(4) read with Rule 161(1) of the BSF Rules, the court would have been well advised to alter the plea of Guilty of the petitioner to Not Guilty. The court not having done so, the proceedings were hit by the provisions of Rule 143(4) of the BSF Rules and the Appellate Authority, being the Dy. Inspector General, rightly concluded that the injustice had been done to the petitioner by reason of the grave irregularity in the proceedings. The petitioner accordingly was allowed to join back his duties and the sentence of his dismissal from service was set aside. So far, the order of Dy.

Inspector General possibly cannot be faulted. What, however, followed was the second trial of the petitioner and this, to our mind, keeping in view the embargo imposed by Section 75 of the BSF Act and Article 20 of the Constitution of India was clearly impermissible.

22. The object and intent of Section 75 which has been incorporated in the BSF Act is clearly to prohibit a second trial of the accused, whether by the Security Force Court or by a criminal court, in all cases where the accused has been convicted or acquitted of an offence by a Security Force Court or by a criminal court or has been dealt with u/s 53 or Section 55. Section 75 consequently imposes a bar on second trial where the first trial was by a court of competent jurisdiction, though not where the first trial was void ab initio.

23. We are fortified in coming to above conclusion from Section 161 of the BSF Act which provides as under:

161. Action by the Deputy Inspector General- (1) Where the Deputy Inspector General to whom the proceedings of a Summary Security Force Court have been forwarded under Rule 160, is satisfied that injustice has been done to the accused by reason of any grave irregularity in the proceedings or otherwise, he may, (a) set aside the proceedings of the court; or (b) reduce the sentence or commute the punishment awarded to one lower in the scale of punishment given in Section 48 and return it to the unit of the accused for promulgation.

24. A bare glance at the provisions of the aforesaid section shows that what is envisaged is the setting aside of proceedings by the Deputy Inspector General where grave irregularity has been committed by a Summary Security Force Court, thereby causing injustice to the accused. The provisions of the said section do not envisage the setting aside of the proceedings in a case where the court had no jurisdiction in the first place to deal with the matter, as for example where the court was illegally constituted or incompetent to deal with the matter on account of want of sanction by the competent authority or otherwise. The trial initiated by such a court against the accused would be no nest in the eyes of law, and quite obviously cannot stand in the way of initiation of de-novo trial.

55. Therefore, in the facts and circumstances and for the foregoing reasons, the petitioner cannot be tried de-novo after his sentence based on his alleged plea of "Guilty" has been set aside. In the totality of the facts and circumstances and for the foregoing reasons, the writ petition is allowed and the trial by the SSFC based on the alleged plea of "Guilty" and consequent sentence awarded by the SSFC to the petitioner is set aside. The order of dismissal passed against the petitioner is quashed and consequently, the petitioner shall be entitled for reinstatement forthwith. The petitioner be therefore, reinstated forthwith. The petitioner shall be entitled for full back wages from the date of his dismissal till his reinstatement and all other consequential benefits including promotions in the mean time. In the

circumstances, the petitioner is also awarded a costs of Rs.10,000 against the respondents. Costs awarded by this Court be paid within four weeks. With these directions and observations the writ petition is allowed.