Devender Kumar Vs. Union of India and Others

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Court : Delhi

Decided On : May-14-2012

Judge : Anil Kumar &Amp; Sudershan Kumar Misra

Appeal No. : W.P.(C) No.1532 OF 1999

Appellant : Devender Kumar

Respondent : Union of India and Others

Judgement :

ANIL KUMAR, J.

1. The petitioner has sought quashing of order dated 27th February, 1998 passed by the SSFC dismissing the petitioner from service on the basis of alleged plea of pleading Guilty and to direct the respondents to reduce the punishment from dismissal to any other punishment as per the provision of the BSF Act.

2. Brief facts to comprehend the disputes are that the petitioner had joined the Border Security Force as a Constable in August, 1990. Subsequently, he was made to work as a constable driver at 151st Bn SHQ Siliguri. Thereafter, in January, 1998, the petitioner was temporarily attached to the 151 Bn, BSF, Rani Nagar.

3. As contended by the petitioner, on 28th January, 1998 a Sentry in the Camp had reported to the Head Constable K.B. Patel, that noise was coming from the

nearby village. HC K.B. Patel, therefore, sent the petitioner along with other two Constables to visit the nearby village and find out the cause of the noise. On reaching the village, however, the petitioner contends that he was surrounded and attacked by some unknown persons. Subsequently, he managed to escape, when another party of officers was sent by the Commander, HC K.B. Patel to release him from the villagers.

4. However, on returning back from the village the Unit Commandant initiated disciplinary proceedings against the petitioner on the allegation that the petitioner had disobeyed the general orders, as he had quarreled with the villagers. Thereafter, as per the petitioner, he was detained in the Guardroom and at the same time, he was also placed under suspension by the Unit Commandant by order dated 2nd February, 1998. The petitioner was also ordered not to leave the premises without prior approval.

5. On 25th February, 1998 a charge sheet was issued charging the petitioner under Section 22-E of the BSF Act for neglecting to obey a general order and under Section 40 of the BSF Act for conduct that is prejudicial to the good order and discipline of the force. The charge sheet dated 25th February, 1998 is reproduced as under:

APENDIX VI

(Rule 53 (2))

CHARGE SHEET

The accused No.90199019 Constable (Driver) Devinder Kumar Sector HQrs BSF Siliguri (attached with 151 Bn BSF) is charged with :-

1. BSF ACT 1968 SECTION 22 (e)

BSF ACT 1968 SECTION 22 (e) NEGLECTING TO OBEY A GENERAL ORDER/

In that he,

at BOP Bhatpara under 151 Bn BSF on 28-01-98 at about 2000 hrs visited the house of Khusrruddin of village-Hadiya Para placed out of bound to all ranks vide BN Order No.Ops/Order/151/96/5868-73 dated 30-07-96.

1. BSF ACT 1968 SECTION 40 BSF ACT 1968 SECTION 40 AND ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

In that he,

While posted at BOP Bhatpara on 28-01-98 at about 2000 hrs went to village Hadiya para entered into the house of Hasina Khatoon with bad intention whereas he was gheraoed by the villagers and detained until rescued by BOP personnel.

Raninagar (...B)

(D S RAWAT)

COMMANDANT

Dated, the 25th Feb’98

151 Battalion BSF

6. Thereafter, on 27th February, 1998 the petitioner was tried before the Summary Security Force Court. According to the petitioner, the enquiry was conducted in a hurried manner and was done without the Unit Commandant applying his mind to the facts and circumstances of the case and on the same day the order of dismissal was passed against the petitioner.

7. Aggrieved by the order of dismissal, dated 27th February, 1998, the petitioner made various representations to the higher authorities, by letters dated 1st March, 1998, 2nd March, 1998 and 16th March, 1998. However, by letter dated 15th July, 1998 the statutory representation of the petitioner was rejected as being devoid of any merit.

8. Thereafter, the petitioner approached this Court invoking its writ jurisdiction for seeking the quashing of the termination order dated 27th February, 1998, and also

seeking quashing of the excessive power delegated to the Unit Commandant under Sections 70, 74 and 114 of the BSF Act, 1968, *inter alia,* on the ground that excessive power has been given to the Unit Commandant, as he is the sole authority to initiate a proceedings, to try the offence and to punish a person under his charge without any requirement of confirmation of his decision by any higher authority.

9. The petitioner further pointed out that in case of a sentence passed by the Director General Security Force, the confirmation by the Central Government u/s 108 of the BSF Act is required, and that in case of a sentence passed by the Petty Security Force Court too, the confirmation by the Central Government u/s 90 of the BSF Act is required. However no such safeguards have been provided under the Act in the case of the Summary Security Force Court. According to the petitioner, since the Unit Commandant can authorize any sentence upon a person except for the death sentence and imprisonment exceeding one year, the fact that his decision does not need any confirmation by any other higher authority has led to excessive delegation and could occasion, as in his case, the gross abuse of such powers.

10. The petitioner has also contended that his pleading `guilty, could not be acted upon during the SSFC proceedings, as he had not signed the same and it had been recorded as if he had. It is further urged that even if it is accepted that he had indeed pleaded guilty then the mandatory requirement of Rules 142 and 143 had to be complied with, which wasn't at the time and nothing was explained to him. Considering the facts and circumstances the Commandant should have converted the alleged plea of guilty to not pleading guilty.

11. It is also contended that there is no evidence on the record to support of his conviction, and that the perusal of the statements of the witnesses during ROE reveal that the very statement of the alleged victim has not been recorded. Thus, the petitioner contended that the entire proceedings were a sham, and that the principles of natural justice had been grossly violated, since he didn't get the opportunity to defend himself properly.

12. The petitioner has further contended that the trial was conducted without application of mind on the part of the Unit Commandant and that it was all wrapped up within an hour, after which it was decided to dismiss the petitioner without assigning any reasons. The petitioner also contended that the punishment awarded by the authorities is disproportionate to the alleged offence and reliance in this regard is placed on Ranjit Thakur v. UOI, AIR 1987 SCC 2386 wherein it was held by the Supreme Court that the quantum of punishment is within the jurisdiction and discretion of the Court Martial and that the sentence has to suit the offence.

13. The pleas and contentions of the petitioner have been refuted by the respondents in the counter affidavit dated 25th August, 2000 by contending that on 28th January, 1998 at about 2000 hours the petitioner went out of the BOP without taking any permission or informing anyone at the BOP and visited the house of a divorcee women, namely Hasina Khatoon and Sakina Khatoon, residents of village Hadiapura with bad intent. There, however, the petitioner was caught by the brother of the two women and a scuffle had taken place. Consequently, an alarm had been raised by the villagers, and the matter was reported to the BOP Commander, HC K.B. Patel. Meanwhile, according to the respondents, the petitioner somehow had managed to escape the village and return to the camp without anyone noticing the same.

14. On receiving the information regarding the alarm being raised in the village, HC K.B. Patel had detailed a party comprising of the petitioner, Constable Satpal and W/C Ganesh Chand, to go to the village and find out the cause of the commotion.

15. As soon as the party reached the village, the villagers recognized the petitioner and gathered around him. Constable Satpal and Ganesh Chand somehow managed to escape, however, they left the petitioner behind, and they immediately reached the BOP and informed HC K.B. Patel about the incident. Again a party comprising of Ct. Bancha Ram, Satpal and Ganesh Chand reached the village and asked the villagers to release the petitioner. On threatening the villagers, they finally managed to rescue the petitioner and on returning to the BOP, the entire

incident was reported to the Commander and an enquiry was initiated into the matter.

16. The respondents have further contended that an offence report was submitted on 4th February, 1998 and an ROE was ordered for the offences committed under Sections 22(e) and 40 of the BSF Act. It is also urged that sufficient time was taken in conducting the enquiry, and that after the preparation of the ROE the Commandant had applied his mind to the facts that were brought out in the ROE and thereafter, the Summary Court Proceedings were convened and substantial evidence was found on the record to inculpate the guilt of the petitioner.

17. It is also submitted that the petitioner was given the opportunity to cross-examine the witnesses during the ROE as per the requirements of Rule 48(3), however, the petitioner had refused to do so. It is further contended that even during the SSFC proceedings the petitioner was again cautioned and given an opportunity to make a statement or produce any evidence in his defense, however, this opportunity too was also declined by the petitioner.

18. According to the respondents, all the provisions of the BSF Act and the Rules had been duly observed, while dismissing the petitioner from the service and thus, this Court should not interfere with the sentence of dismissal under its writ jurisdiction, as the scope of interference under Article 226 is limited. Therefore, it is contended that this Court should not assume the role of the Appellate Authority.

19. The pleas raised on behalf of the respondents have been denied by the petitioner in his rejoinder dated 12th October, 2000 by contending that the Unit Commandant had not conducted a proper enquiry, and that the petitioner had not pleaded “guilty” during the course of the proceedings, which had been recorded otherwise in the cyclostyled papers contained in the record. According to the petitioner, this plea is also evident from the fact that the plea of “guilty” does not bear any signatures of the petitioner. In any case, as per the petitioner, even if the plea of guilty is to be believed then also the order of dismissal deserves to be quashed since the necessary safeguards prescribed under Rule 143 and 142 were not complied with. Thus, the petitioner has contended that he was gravely prejudiced and that the principles of natural justice had been violated and

consequently, the entire SSFC proceedings are vitiated.

20. Regarding the statements of the witnesses recorded during the ROE, the petitioner has contended that none of the statements inculpate the guilt of the petitioner and, in fact, the alleged victims or the person aggrieved in the said matter have not even been examined by the respondents. Thus the petitioner contends that there is no evidence on the record to substantiate the finding of guilt as against the petitioner. The petitioner urges that the ROE was prepared unilaterally by the Unit Commandant, maliciously and in a haphazard manner to single out the petitioner. The petitioner also contends that he was not given the opportunity to have his version recorded at the time of the ROE and thus he was denied the proper opportunity to defend himself.

21. 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 171 (2010) DLT 261, Vimal Kumar Singh (Ex.L/NK) v. Union of India and Ors.; 172 (2010) DLT 200, Balwinder Singh v. Union of India and Ors.; 134 (2006) DLT 353, Banwari Lal Yadav v. Union of India and Anr.; W.P.(C) No.14098/2009, Ex. Constable Vijender Singh v. Union of India and Ors., decided on 1st October, 2010; 152 (2008) DLT 611, Subedarhash Chander (Ex. Naik) v. Union of India and Ors.; LPA 254/2001, The Chief of Army Staff and Ors. v. Ex. K. Sigmma Trilochan Behera; 1989 (3) SLR 405, Uma Shankar Pathak v. Union of India and Ors. and 2008 (104) DRJ 749 (DB) Mahender Singh (Ex. Constable) v. Union of India and 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.

22. Learned counsel for the respondents has relied on 110 (2004) DLT 268 Chokha Ram v. Union of India and Anr.; Ex. Constable Ram Pal v. Union of India and Ors., W.P.(C) 3436/1996 decided on 27th July, 2011 and W.P.(C) No.4997/1998, Kalu Ram v. Union of India and 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.

23. 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.

24. It is evident from the record that the plea of guilty was recorded on a cyclostyled/typed sheet. A scanned copy of original record of plea of guilty and the alleged compliance of Rule 142 and 143 as recorded in the SSFC is as under:

(Letter)

25. Few relevant facts which emerge from the original record of SSFC are that the `plea of guilty'is recorded at page number 30 of the SSFC record. It is a typed page and underneath, the plea of 'guilty'the alleged compliance of Rule 142 is recorded. The plea of 'guilty'is not signed by the petitioner or by the Commandant. After the petitioner allegedly pleaded guilty, it is recorded 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 had understood the charges (`both the charges'is written in hand and is not typed) and the plea of guilty, particularly in relation to the difference in procedure that will be followed and thus it is stipulated that the provision of BSF rule 142 (2) have been complied with. This certificate about compliance of requirement of Section 142 and 143 is not signed by the Commandant. The SSFC proceedings too are only initialed on the left hand margin on all pages. Before the `plea of guilty'obtained from the petitioner, it is written that the charges were translated and explained to the petitioner. Though it is recorded that the Court had satisfied itself that the charges are understood by the petitioner, however, it does not specify that the plea of guilty and the alleged compliance of Rule 142 and 143 as recorded in English, was also translated and explained to the petitioner. If it is not so recorded, the only inference that can be drawn is that it was not done.

26. It is also imperative to note that while the plea of guilty is recorded on page 30, the proceedings on the plea of guilty is recorded on page 28 and the verdict of the court is recorded at page no. 21 and 20. The pagination of the SSFC proceedings are required to be in ascending order (as ROE in the original file shows that the page numbering starts from the last page and it is in ascending order) and thus the earlier steps of the proceedings, should have been on the 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 and it should have finally concluded with the verdict of the Court. However, from the record it appears that the proceedings of Court’s verdict are on pages 31, 21 and 20 and in between the proceedings of plea of guilty about compliance of Rule 142 and 143 have been inserted. Thus, it leads to the only inference that the cyclostyled/typed pages were filled up subsequently and therefore, there is reasonable doubt about the genuineness of the SSFC proceedings. It reasonably appears to have been manipulated 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 maintained in the ascending order.

27. According to the record of the SSFC proceedings, it was allegedly put 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.

28. 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 'the accused does not want to call any witnesses’. This too has not been signed by the petitioner or even by the Commandant who conducted the SSFC proceedings. All the SSFC proceedings are initialed by someone in the left hand margin.

29. 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 the plea of guilty was recorded in

compliance with the requirements of Rules 142 and 143 of the BSF Rules. Rather the perusal of the proceedings substantiate the version of the petitioner that a proper enquiry was not conducted, and that he has been punished without any SSFC proceedings. It is apparent that in these facts and circumstances he had not pleaded guilty and thus, the entire SSFC proceedings are vitiated.

30. The Courts have laid down time and again the requirement of signing the plea of guilty by the accused in the SSFC proceedings of BSF and other Forces including the Army. The rules of BSF regarding recording the `plea of guilty'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’.”

31. 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 under Section 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 and Ors.; Subhash Chander (Ex. Naik) Vs. Union of India and Ors. and Chokha Ram Vs. Union of India and 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 and 22 of the Kalu Ram (supra), the Division Bench of this Court had held as under:-

"21. In the decisions reported as Lance Naik Vimal Kumar Singh v. Union of India MANU/DE/1512/2010 and Subhash Chander v. Union of India MANU/DE/1266/2008 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 v. Union of India 110 (2004) DLT 268 and Diwan Bhai v. Union of India MANU/DE/1823/2001 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."

32. 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.

33. 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 and 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 and 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."

34. 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 got 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 the eventuality of petition being restored, 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."

35. 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.

36. In the facts of this case, thus, it cannot be inferred that the petitioner had pleaded guilty. It is also evident from the ROE that at the time the petitioner had gone to enquire about the noise in the village, the petitioner was accompanied by Constables Satpal, PW-4 and Ganesh Chand, PW-3 and that thereafter, when he was released from the villagers, Constables Satpal, PW-4 Ganesh Chand, PW-3 and Bancha Ram, PW-1 were present with him. However, perusal of their statements reveals that they could not properly understand what the villagers were speaking in Bengali and Constable Bancha Ram, PW-1 also deposed that HC K.B. Patel did not record the incident in the GD Register. It is also evident from the record that even though it was alleged that the petitioner had entered the house of one Hasina Khatoon, with bad intention, however, the said person has not been examined. In these circumstances, it was also incumbent upon the Commandant to have recorded 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 punished with dismissal without any evidence on the record and that the proceedings of the SSFC were prepared and the SSFC was conducted in gross violation of the provisions of the BSF Act and Rules.

37. 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 and Ors., 103 (2003) DLT 604 and Uma Shankar Pathak v. Union of India and Ors., 1989 (3) SLR 405; Balwinder Singh v. Union of India and Ors., 172 (2010) DLT 200; Subhash Chander (Ex. Naik) v. Union of India and Ors., 152 (2008) DLT 611 and in Mahender Singh (Ex.

Constable) v. Union of India and Ors., 2008 (104) DRJ 749 (DB) have consistently held that the `plea of guilty'recorded on printed or typed 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 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.

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.

38. 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 preposition 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).

39. 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 P.S.Rao Vs State, JT 2002 (3) SC 1, 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, (1980) 4 SCC 262 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.”

40. 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 set aside.

41. 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, 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 charges framed against him. Resultantly, the order of the SSFC dated 27th February, 1998 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 favor of the petitioner.

42. The next contention on behalf of the respondents is that even if the petitioner’s punishment by the SSFC dated 27th February, 1998 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.

43. 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.

44. 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.”

45. 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 under Section 75 of the BSF Act 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 Banwari Lal Yadav v. Union of India, 134 (2006) DLT 353.

46. This cannot be disputed by the respondents that the SSFC which tried the petitioner and punished him with dismissal from service on 27th February, 1998 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.

47. 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 under Section 53 or under Section 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 under Section 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.”

48. 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, Sukhen Kumar @ Chandra Baisya Vs. Commandant; Basdeo Agarwalla v. King Emperor, AIR 1945 FC 16; Yusefalli Mulla Noorbhoy Vs. R., AIR 1949 PC 264; Baijnath Prasad Tripathi v. The State of Bhopal, 1957 SCR 650; Mohd. Safi v. State of West Bengal, (1965) 3 SCC 467; CBI v. C. Nagrajan Swamy, (2005) 8 SCC 370 and State of Goa v. Babu Thomas, (2005) 8 SCC 130 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.”

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, the delinquent could not be tried again.

49. 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.

50. 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 under Section 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."

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.

51. The learned counsel for the respondents has also contended that since the SSFC proceedings have been held to be vitiated and he is not to be tried again but he should not be granted full back wages. Reliance in this regard has been placed on K.K. Synthetics Ltd. v. K. P. Agrawal and Anr. (2007)2 SCC 433. However perusal of the case reveals that the facts of the same are clearly distinguishable from the facts of the present matter. In the said case the difference between "misconduct reinstatement" and illegal termination was clarified. It was held that misconduct reinstatement refers to reinstatement in cases of proved and affirmed misconduct where the punishment of dismissal is substituted by some lesser

punishment. Therefore it was held that in case of “misconduct reinstatement” the Court cannot hold the employer responsible and thus back wages cannot follow as a necessary consequence of such reinstatement. However, as held hereinbefore, the respondents have failed in proving either of the two charges imputed against the petitioner and thus, the present matter does not fall within the purview of “misconduct reinstatement”. Therefore, denying the petitioner full back wages on reinstatement for no fault of his or in light of unproved charges would be not permissible.

52. 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 by order dated 27.2.1998 is set aside. The order of dismissal dated 27.2.1998 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, 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.