

Ex. Constable Rakesh Kumar Vs. Union of India and Others

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Court : Delhi

Decided On : Apr-30-2012

Judge : Anil Kumar & Sudershan Kumar Misra

Appeal No. : W.P.(C) No. 6917 of 1999

Appellant : Ex. Constable Rakesh Kumar

Respondent : Union of India and Others

Judgement :

ANIL KUMAR, J.

1. The petitioner has sought a writ of certiorari seeking quashing of the SSFC proceedings in which the petitioner allegedly pleaded guilty and the SSFC sentenced the petitioner to undergo six months rigorous imprisonment and dismissed him from service. The petitioner has also sought that he should be reinstated with full back wages, all the consequential benefits and reliefs.

2. Brief relevant facts to comprehend the controversies are that the petitioner joined BSF as a Constable in the year 1990. In June, 1999, he was posted in F „Coy.” of 62 Bn, BSF and deployed at FDL “Uragali”. According to the petitioner, on 18th June, 1999, he was detailed as line party member to repair telephone line between „Z”Gali and „Uragali” which was done by the party of the petitioner and they returned at about 1730 hours.

3. The petitioner alleged that on coming back after repairing the telephone line, he went to cookhouse to have his meal. The cook was, however, not present nor chapattis were there. So he started making chapattis for himself. Post Commander, Subedar Ram Das came at about 2000 hours and told CHM Prabhu Dayal to ask the cook to make chapattis and also ordered that no constable would be allowed to make chapattis.

4. According to the petitioner, in the mean time, HC Rajinder Singh also reached there and arguments took place between HC Rajinder Singh and Subedar Ram Das. Rajinder Singh made allegations against Subedar Ram Das that he was accepting illegal gratification from the civilian. The petitioner alleged that Subedar Ram Das was heavily drunk and abused the HC Rajinder Singh in the filthy language abusing his daughter. This resulted into a scuffle between them and Subedar Ram Das slapped HC Rajinder Singh. The post personnel who were present there, however, separated them and took both of them away. Thereafter, the petitioner was detailed for sentry duty as Camp Guard from 2100 hours to 2400 hours midnight on the night intervening 18/19 June, 1999.

5. The petitioner alleged that when he went to take over his duty at 2100 hours, the earlier sentry Constable Yesudas informed CHM (Company Havaladar Major) Prabhu Dayal that OK report was required to be sent to Coy. HQ at about 2100 hours. This could not be done earlier as telephone lines were out of order.

6. The CHM Prabhu Dayal, therefore, asked the petitioner to go and report the matter to the post commander. The petitioner alleged that he asked CHM to come along with him, however, he was asked to go first on his own and CHM told the petitioner that he would follow him after two minutes.

7. According to the petitioner's allegation, when he reached the hut of post commander and reported the matter to him, the post commander was lying in the sleeping bag. He got up and sat on his bed and started abusing the petitioner. He hurled abuses to his mother and sister on the ground that his sleep had been disturbed by the petitioner.

8. The petitioner requested the post commander not to abuse his mother and sister as he was performing his official duty only and he had been asked to come by the CHM. This infuriated post commander further who was drunk and was smelling badly of liquor. He pounced on him and punched the petitioner under his eyes. The petitioner alleged that he lost his sense and sat on the ground. When he regained his sense, other post personnels were there and post commander Subedar Ram Das accused the petitioner of hitting him. The post commander, however, continue to abuse the petitioner.

9. According to the petitioner, the post commander, Subedar Ram Das had a minor cut on his face which could have been caused either by the torch which the petitioner was holding, which he swung in reflex action to save himself when he was punched under his eyes by the post commander Subedar Ram Das or the injury was self inflicted by Subedar Ram Das in order to save himself from any possible charge of using criminal force against the petitioner.

10. The petitioner categorically denied that he had hit Subedar Ram Das by Rifle butt. He had also told the post personnels who had assembled there that he was punched by Subedar Ram Das under the eyes.

11. The petitioner alleged that thereafter Subedar Ram Das, however, narrated his version to the superior authorities which was believed by the superior authorities, as Subedar Ram Das was a senior officer and no attention was given to the version of the petitioner, nor any enquiry was made regarding ill treatment meted to him by Subedar Ram Das.

12. A ROE was ordered on 22nd June, 1999, however, no action was initiated against Subedar Ram Das. According to the petitioner, thereafter, he was tried by SSFC on 5th July, 1999 without following procedure contemplated in the BSF Act and rules and he was dismissed from service and also awarded six months rigorous imprisonment.

13. The petitioner asserted that the provisions of SSFC Rule 45 were not complied with and the certificate dated 5th July, 1999 was issued by the commandant stipulating that BSF Rule 45 was complied with, which rather vindicates his plea.

14. The petitioner categorically contended that he did not plead guilty to the charge which had been falsely depicted by the commandant in the SSFC trial. He was marched before the commandant on 5th July, 1999 who told him that he has been dismissed from service.

15. The petitioner further pleaded that for the sake of argument, if he had pleaded guilty, the commandant ought not to have accepted and should have proceeded with the trial in terms of BSF Rules 142 and 143 (4)(a) considering the facts and circumstances of the case and as per the version given by the petitioner and in view of the harsh penalty of six months rigorous imprisonment and dismissal from service which was imposed on the petitioner.

16. The petitioner asserted that the SSFC proceedings were fabricated by the commandant stipulating that provision of the BSF Rule 142 had been complied with. According to the petitioner, cyclostyled proforma for SSFC trial is circulated to all the Units by BSF Headquarter which is filled with the name and number of any accused and thereafter the sentence is pronounced.

17. The petitioner 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. Even on the date of incident, he had slapped the HC Rajinder Singh and had picked up a quarrel with him. The petitioner categorically denied that he had hit Subedar Ram Das with butt of his Rifle. The petitioner contended that if he had beaten up Subedar Ram Das, the injuries could not be only an abrasion 1 cm x .1cm x .2cm. The petitioner also alleged that Subedar Ram Das used to indulge in anti national activities across the Line of Control and also used to take illegal gratification in the form of cash, dry fruits, chicken, milk and curd for allowing the civilians to take their cattle for grazing across the line of control. The post personnel had requested him a number of times and had objected to his illegal activities. He asserted that without any fault on his part he has been made to pay heavy price in terms of losing his job on being implicated in a false case by Subedar Ram Das. The petitioner also contended that according to the version of the post commander Subedar Ram

Das, he was also hit by Head Constable Rajinder Singh with some blunt object at 2200 hours before the petitioner had allegedly hit him with his rifle butt. The petitioner contended that Subedar Ram Das had only one abrasion/injury on him and it is inconceivable that if two persons allegedly hit him, they would hit him at the same place so as to cause same injury. In any case, it has been alleged that it could not be inferred as to who had hit him in the facts and circumstances causing the alleged injury. The petitioner also alleged that he was asked to go to the post commander by CHM Prabhu Dayal and the petitioner had asked CHM to come along with him who however, asked him to go first and told him that he will come there within two minutes. If the petitioner wanted to hit Subedar Ram Das, he would not have done so because he knew that he was to be followed by CHM Prabhu Dayal.

18. The petitioner also alleged that the commandant had completely ignored the evidence of the Prabhu Dayal PW2, Shyam Sunder Prasad PW3, and Yesudas PW4 recorded in ROI who had told that the petitioner had told them that he was punched by Subedar Ram Das under his eyes.

19. The petitioner asserted that no action was taken against the post commander Subedar Ram Das as the petitioner has reliably learned that the commandant Sh.B.K.Mehta was himself involved in some cases where Subedar Ram Das was the prime witness, therefore, no action was taken against Subedar Ram Das.

20. Regarding the punishment imposed on the petitioner, he asserted that he has unblemished and spotlessly clean record of 9 years service and had earned seven good entries and he had always been a disciplined and obedient soldier and he could not indulge in any act of indiscipline without any provocation. In order to substantiate the disproportionate punishment meted to him, the petitioner alleged that HC Rajinder Singh who was also accused of same act of indiscipline has merely been dismissed from service whereas the petitioner had also been imposed rigorous imprisonment of six months.

21. The petitioner also asserted that HC Rajinder Singh was not deliberately examined in order to favor Subedar Ram Das as otherwise the testimony of HC Rajinder Singh would have exposed the falsity of the testimony of Subedar Ram

Dass and his false version. According to the petitioner, no person other than Subedar Ram Das has deposed anything against the petitioner that he used criminal force against him though he was the post commander.

22. The grievance of the petitioner is also that though he had applied for a copy of the SSFC trial on 22nd July, 1999 when he was in custody, however, the copy of the trial proceeding was deliberately delayed to him as he was supplied the copies by letter dated 21st September, 1999 dispatched on 22nd September, 1999.

23. The petitioner had filed a statutory petition against his punishment by SSFC to Director General, BSF on 5th July, 1999. The petitioner contended that despite the fact that he was languishing in civil Jail, Jammu (JandK), neither the statutory petition was disposed of, nor the petitioner was given any other relief. Aggrieved by these facts, he was left with no other remedy but to approach this Court and invoke its Extraordinary Jurisdiction.

24. The petitioner challenged the actions of the respondents inter-alia on the ground that the mandatory provision of the BSF Rules, 45 were not complied with by the commandant before ordering the ROE; the petitioner had not pleaded „guilty” which is falsely depicted by the commandant, as actually no trial had taken place; the commandant ought not to have accepted the alleged plea of guilty by the petitioner in view of the Rules 142 and 143 (4)(a) of the BSF rules; the SSFC proceedings were fabricated, as a cyclostyled proforma was merely filled; no oath was taken by the commandant as provided under Section 136 of the BSF Act which according to the petitioner is apparent from the record of SSFC trial proceedings and that commandant did not taken any action against the Subedar Ram Das as he was a witness in a case pending against commandant and had to depose in his favor.

25. The writ petition is contested by the respondents contending, inter-alia that on 18th June, 1999 at about 2115 hours the petitioner was told by HC Prabhu Dayal to give OK report to Subedar Ram Das post commander who was in his hut. According to the respondents, the petitioner while going to the hut of post commander Subedar Ram Das started abusing him and entered his hut and had hit him with the butt of his Rifle who was lying in his sleeping bag. The post

commander Subedar Ram Das cried “Bachaw” “Bachaw”. Because of this, other personnels of the post assembled and took away the petitioner. According to the respondents, the post commandant Subedar Ram Das was bleeding from his nose and below left eye. Since the telephone line was out of order, the incident could not be reported to the company commander and was reported next day at 0430 hours. Subedar Ram Das was shifted to Army Hospital and then Bn Headquarter and the matter was reported to the Bn Commandant who sent a detailed report to the Commandant. An ROE was conducted against the petitioner and he was tried by the SSFC and during the SSFC proceedings, the petitioner unequivocally pleaded „guilty”to the charge and he was sentenced to suffer six months rigorous imprisonment in civil prison and was dismissed from service. The SSFC trial proceedings forwarded by letter dated 9th July, 1999 to Law Officer for post trial and for counter signature of the DIG, BSF Kupwara. After it was received back after promulgation, the commandant had sent the petitioner to civil jail in accordance with the warrant and the petitioner was handed over to the Civil Jail, Jammu on 5th September, 1999 and dismissed from service w.e.f. 5th September, 1999. According to the respondents, the petitioner committed heinous offence/crime using criminal force, and therefore, the punishment imposed upon him is justified.

26. Regarding the unblemished service record of 9 years of the petitioner, the respondents contends that does not entitle him to take liberty or to do any crime or misconduct as have been committed by him.

27. The respondents also contended that in the cookhouse, if the cook was not present, the petitioner was not supposed to make chapattis. Rather he should have reported about the absence of the cook from the cookhouse to his immediate superior officer. According to the respondents when Subedar Ram Das, post commander came to the cookhouse, he asked CHM to call the cook for making food, however, at that time HC Rajinder Singh was in an inebriated state and had started to throw stones on Subedar Ram Das. The stone did not hit Subedar Ram Das. HC Rajinder Singh, however, was taken away from there. The respondents denied that Subedar Ram Das was in state of intoxication on the fateful day.

28. The respondents, however, admitted that the petitioner had gone to the hut of Subedar Ram Das, post commander for giving OK report at the instance of CHM. However, instead of giving report he hit the Subedar Ram Das on his face and head with butt of his personal weapon and torch. The respondents placed reliance on the statement of HC Prabhu Dayal.

29. The HC Prabhu Dayal in his statement recorded on 23rd June, 1999 had stated that the petitioner had come to him and he had told him that the OK report has not been given, and therefore, he had sent the OK report with the petitioner to the post commander, Subedar Ram Das who was in his hut. He also confirmed that he had told the petitioner that he would follow the petitioner to the hut of the Subedar Ram Das. He had stated that when he reached the hut he saw that the petitioner was standing on the left side of the bed and Subedar Ram Das was lying on the bed turning right side. The relevant statement given by the HC Prabhu Dayal on 23rd June, 1999 is as under:-

"I tried to contact Coy. HQ on sent could not succeed in the meantime at about 2100 hrs No.90173020 Constable Rakesh Kumar asked that what has happened. I said that OK report has not been given I send No.90173020 Constable Rakesh Kumar to report the matter to Post Commander Subedar Ram Das on his hut. There was another night guard CT Shyam Sunder Prasad near hut of post commander, **CT Rakesh Kumar also asked me to follow him.** I told him that I am coming after two minutes. After one minutes I heard the noise bunker of Subedar Ram Das he was crying „Bachawa and Bachawa" I ran to his hut and went inside. I saw Constable Rakesh Kumar standing left side of his bed. Subedar Ram Das was lying on the bed turning right side. I brought CT Rakesh Kumar outside and Subedar Ram Das also came outside. Post commander Subedar Ram Das told me that CT Rakesh Kumar attacked him. I saw Subedar Ram Das was bleeding profusely from nose and under the left eye. All post personnel gathered there. I asked to CT Rakesh Kumar that what happened. **CT Rakesh Kumar replied that when I report about OK report to the post commander, the post commander abused me that you people do not let him sleep and hit me boxing on my right eye area.** So after getting punch I attacked with torch which was in my hand on face of Subedar Ram Das. Subedar Ram Das asked me

remove CT Rakesh Kumar from sentry duty.”

30. The respondents till filing of their counter affidavit dated 20th October, 2000 had not contended that the petitioner should not have made chapattis, if they were not available and the cook was also not available and he should have rather reported about it to immediate superior officer. The plea of the petitioner that Subedar Ram Das had hit him under his eyes was alleged to be false and fabricated. The respondents also referred to the statement given by the doctor P.K.Pandey, CMO 17 Bn BSF during ROE stating that Subedar Ram Das had sustained lacerated wound on left side of cheek. Reliance was also placed by the respondents on absence of any injury mark on the petitioner, and therefore, it was inferred that the petitioner had used force against Subedar Ram Das. The respondents also contended that from the evidence recorded in ROE it was apparent that Subedar Ram Das was in such a position which was a submissive one and not an offensive one and the plea of the petitioner that Subedar Ram Das had hit him on the eyes was held to be concocted version of the petitioner.

31. The respondents pleaded that after ROE against the petitioner was recorded on 26th June, 1999, the charge under Section 20 (a) of the BSF Act was framed and thereafter the petitioner was tried on 5th July, 1999 and since the petitioner pleaded guilty. Therefore, he was awarded the punishment of 6 months rigorous imprisonment and dismissal from service. Reliance was also placed on the statement of the petitioner who had asked to take lenient view and to impose minimum punishment to him. According to the respondents the reply of the petitioner indicates that he had pleaded guilty and had admitted his fault as otherwise he would have stated that he has been falsely implicated in the case. The respondents alleged that there is no procedural illegality in conducting the SSFC and imposing the punishment on the petitioner pursuant to his pleading guilty. The respondents alleged that the provisions of Rule 142 Sub Rule (2) were complied with and since the petitioner pleaded guilty, even thereafter the petitioner was given opportunity to make a statement in reference to the charge and or in mitigation of punishment. The petitioner had rather stated that the lenient view may be taken against him and minimum punishment may be given.

32. The respondents contended that in the instant case, the SSFC took a very lenient view as the petitioner was awarded only six months rigorous imprisonment in civil jail and he was dismissed from service as otherwise the Security Force Court would have awarded the sentence of one year rigorous imprisonment along with dismissal from service.

33. The respondents also alleged that Subedar Ram Das had gone to Army Bunker after the incident with HC Rajinder Singh, as he wanted to avoid any further incident, as the petitioner was under the state of intoxication and not due to the reasons alleged by the petitioner. Para 20 of the counter affidavit is under:-

“20. The averments made in this para partially admitted and the rest all are denied. It is a fact that Subedar Ram Das had gone to the Army Bunker as he wanted to avoid any further incident as **the petitioner was under the state of intoxication and not due to the reason given by the petitioner.**”

34. The respondents reiterated that the presence of the injury mark on the face of Subedar Ram Das and absence of injury mark on the body of the petitioner clearly proves that it was the petitioner who had used criminal force against Subedar Ram Das and not vice versa. The respondents also alleged that there was no question of taking recourse to the provisions of the Indian Penal Code for the alleged use of criminal force by the petitioner against the Subedar Ram Das. Regarding the different punishment given to HC Rajinder Singh and the petitioner, the respondents contended that HC Rajinder Singh was not in possession of his personal weapon whereas the petitioner who had been detailed for performance sentry duty was in possession of personal weapon and he had used criminal force against his superior while he was in possession of his personal weapon near the line of control. Considering the seriousness and circumstances, the punishment of six months imprisonment and dismissal from service cannot be termed disproportionate, nor it can be inferred that the commandant had acted in an hostile and in discriminating manner.

35. The respondents denied that they declined to produce any relevant evidence from the side of the petitioner. It was averred that had the petitioner expressed his desire to produce the HC Rajinder Singh as his defence witness, he could have

done so at his own arrangement. The allegation that there was an intention to delay the supply of copy of the SSFC proceedings was also not admitted and was denied. The respondents also denied the allegation made by the petitioner against the commandant Sh.Mehta, that he tried to keep Subedar Ram Das in good humor as, Subedar Ram Das was a witness in some cases against the commandant Mehta. The respondents, however, did not specifically deny whether any case was pending against the commandant Mehta or not?

36. Learned counsel for the petitioner emphatically contended 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, Subhash 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 as the proceedings were in fact fabricated and did not take place except that the petitioner was called and told that he has been dismissed.

37. 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 petitioner had pleaded guilty and the relevant rule does not contemplate that the plea of guilty should be signed by the accused.

38. This Court has heard the learned counsel for the parties in detail and have also perused the writ petition and the counter affidavit and the documents produced with them and the judgments relied on and referred to by the learned

counsel for the parties. The Charge framed in SSFC against the petitioner was as under:

“BSF ACT USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER SE O-20(a)

FDL

Uragali

18.6.1999

in that he, at FDL Uragali on 18. 6. 1999 at about 21:15 hours while performing the duty of night sentry on the same FDL wilfully entered the snow hut of Urgali Post Comdr. No. 68433037 Sub Ram Das and hit him on his face and body, with butt of his personal rifle and torch causing injuries on the face and body of Sub. Ram Das.”

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

“Letter”

39. Few relevant facts which emerge from the original record of SSFC are that “plea of guilty” is recorded at page number 41 of the record. It is a pre typed page where the particulars of petitioner had been filled in. Underneath, the „plea of guilty” is recorded in the handwriting of a person other than petitioner. 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 and the effect of petitioner pleading guilty and the procedure which will be followed on petitioner pleading guilty to the charge. It is also stated that the difference in procedure was also explained to the petitioner and the Court has satisfied itself that the petitioner understood the charge and the plea of guilty, particularly the difference in procedure and thus 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 mentioned that plea of guilty and 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, obviously it was not done.

40. The plea of guilty is recorded on page 41 whereas proceedings on the plea of guilty are recorded on page 39. Normally the proceeding of the "plea of guilty" should have been on an earlier page. From this appears that the Court proceedings were recorded even before the "plea of guilty" was recorded or that the cyclostyled/typed pages were filled and entire SSFC proceedings have been fabricated.

41. 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 punishment. This question was put in English. It is not recorded that it was explained to the accused in the language, Hindi, which he understood. The answer of the accused has also been written in English. The statement of the accused is not signed.

42. Similarly other 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 'yes?'. Just thereafter, the answer of head Constable Prabhu Dayal has been recorded to the effect that the character of the petitioner is satisfactory. The statement of said witness is also not signed by him. The said witness had duly signed his statement given before ROE but did not sign his statement given before SSFC. Rather the commandant had written that the said witness had stated so and the statement of the witness was not recorded.

43. 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 plea of guilty was recorded in compliance with requirement of Rules 142 and 143 of BSF Rules. Rather perusal of the proceedings substantiate the version of the petitioner that cyclostyled/ pre-typed pages were filled in and that he was called and told that he has been dismissed and that he had not pleaded guilty and the entire SSFC proceedings are fabricated.

44. What the Courts have laid down about signing of plea of guilty by the accused in SSFC proceedings of BSF and other Forces including 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 by the Commanding Officer that (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 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 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 verbatim** This was not done in the case of *Uma Shankar Pathak* instead the Court had merely satisfied itself with the certificate that "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 benefit 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?."

45. Learned counsel for the respondents has relied on Kalu Ram (supra), 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 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 other constable and he allegedly fired a shot in the air from 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 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 the 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 SSFC taking into consideration that he had been convicted earlier five times for various offences and 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 noted by the SSFC. 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, the findings of the SSFC stood vitiated as

there was no other evidence inculcating him. 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.”

46. 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 respondents” then in that case the respondents should be permitted to try the petitioner afresh.

47. 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 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 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 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.”

48. Since the same Coordinate Bench which had decided the Kalu Ram (supra), on which reliance has been placed emphatically by the respondents had held in its earlier judgments in the matter of Ex. Constable Ram Pal (supra) 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?”, had not considered its earlier judgment. Even in Kalu Ram (supra) it had not held conclusively the said reasoning, as the said writ petition was dismissed in default. The reasoning in the case of 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 any reason was 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 with a view to remind itself in case of the restoration of the writ petition by Kalu Ram, as the writ petition was decided not on merits but was dismissed in default of appearance of Kalu Ram or his counsel. 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.”

49. 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.

50. Even from the facts of this case it cannot be inferred that the petitioner would have pleaded guilty. The charge against the petitioner is that while performing his night duty he willfully entered the snow hut of the commander whereas the fact is that he was asked by CHM to go to the hut of the post commander to give the report. It is admitted by CHM that the petitioner had asked him to come with him in a statement given before ROE. The petitioner did not have any premeditated plan

to take revenge or to settle scores with the post commander. There must be some provocation for something which happened in the hut of the post commander. The petitioner stated that the post commander was intoxicated and got annoyed as he was woken from sleep and hit the petitioner under his eyes and the petitioner in the reflex action might have hit the post commander with his torch. The petitioner also had pointed out that earlier HC Rajinder Singh had a scuffle with the post commander and it is unlikely that both of them would have hit the post commander on the same spot. The petitioner made a categorical grievance that the commandant favored 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 post commander Ram Dass was not a witness in any case pending against him. Despite the allegation of the petitioner that post commander who had suffered an injury on his cheek, was intoxicated, no medical examination was done on him whether he was intoxicated at that time or not. If the post commander could be medically treated, he could also be medically examined to ascertain whether he was intoxicated or not. The petitioner has also pointed out that though he earned seven good entries and there had been no incident of indiscipline on his part earlier, however, this aspect was not even taken into consideration while awarding him disproportionate punishment of six months imprisonment and dismissal from service. In this background, it is reasonable to infer that the petitioner had not pleaded guilty. In these circumstances it was also incumbent upon the commandant to the record as to how he had complied with requirement of rule 142 and 143 and merely writing that the ramification of pleading guilty by the petitioner was explained to him is not in compliance of rule. 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 SSFC were filled in the typed papers.

51. 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. Sigma 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) has 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 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 as under:

“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, the guidelines have been issued by the respondents and implemented which fact had not been denied by the learned counsel for the respondents.

52. Thus, reliance cannot be placed on the decision of Division Bench in case of Chokha Ram (supra) as the said Bench had not considered the decision of Uma Shankar Pathak (supra) and because other Coordinate Benches 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 though had not only pleaded guilty before the SSFC but in the course of recording of evidence during the ROE, he had made a statement admitting his guilt. It was held that the plea of guilty in ROE could be used as an evidence against him in the SSFC trial and that weighed upon the Division Bench in holding that even if before the SSFC, if the plea of guilty was not signed by the delinquent member of the force, there was evidence, statement of the delinquent before ROE admitting his

guilt. In the circumstances, in Chokha Ram (supra) the Court did not lay down an absolute proposition that 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 in the peculiar facts and circumstances of Chokha Ram (supra), it was held so. 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 fact 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.”

53. 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.

54. 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, Rakesh Kumar, and there have been other violations of Rules 142 and 143 of BSF Rules, 1969 so as to vitiate the punishment of six months imprisonment and dismissal from service awarded by the respondents pursuant to alleged 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 all consequential benefits including of promotion. 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.

55. The petitioner had applied for the copy of SSFC on 22.7.1999. The copy was dispatched on 22.9.1999. No explanation has been given for this delay of two months, though the petitioner was in jail at Jammu. Even the statutory petition filed by the petitioner was not disposed off.

56. 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.

57. 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.

58. 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 case except holding 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.”

59. The learned counsel for the petitioner has refuted this contention of the respondents and has contended that the trial of the petitioner by 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 and Article 20 of the Constitution of India, fresh trial of the petitioner shall not be permissible. Reliance has been placed by the learned counsel on 134 (2006) DLT 353, Banwari Lal Yadav Vs Union of India.

60. This cannot be disputed by the respondents that SSFC which tried the petitioner and punished him with six months imprisonment and dismissal from service on 5th July, 1999 was competent to try the petitioner and the Security Force Court did not lack jurisdiction. In the facts and circumstances, what also emerges is that the proceedings of 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 and in the circumstances, if 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.

61. Section 75 of BSF Act categorically prohibits second trial. Section 75 of the BSF Act is follows 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.”

62. 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 had 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.”

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

64. 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. It was so held in this case by the Appellate Authority.

65. 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."

66. 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.

67. 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" by the petitioner and sentence awarded by the SSFC to the petitioner is set aside. The order of dismissal passed against the petitioner is set aside and the petitioner be 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. The petitioner has already undergone imprisonment for six months which sentence has also been set aside. However the period spent in jail cannot be restored to the petitioner. In the circumstances petitioner is also awarded an amount of Rs.60,000 against the respondents. Amount awarded by this Court to the petitioner and all other amounts

for which he has become entitled be paid within four weeks failing which the petitioner shall be entitled for simple interest at the rate of 9% per annum till the payment of said amount. With these direction and observations the writ petition is allowed.

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