

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No. 2449/2012
Reserved on:27.03.2023
Pronounced on:29.05.2023

Bharosi Lal age 41 years s/o Ram Saroop Jogi R/OPetitioner(s)
Village Chhonkar Wara Kalan Tehsil Wair District
Bharatpur State Rajasthan (pin 321407).

Through:- Sh. R.K. Bhatia, Advocate.

V/S

1. Union of India through Secretary Ministry ofRespondent(s)
Home Affairs Govt. of India North Block New
Delhi (pin 110001);
2. Director General Indo-Tibetan Boarder Police
Force CGO Complex Lodhi Road New Delhi
(pin 110003);
3. Deputy Inspector General ITBP Tigri Camp
Sangam Vihar New Delhi;
4. Commandant 22^{BN} ITPB Tigri Camp Sangam
Vihar New Delhi.

Through:-Sh. Vishal Sharma, DSGI with
Sh. Eishaan Didhichi, CGSC.

CORAM: HON'BLE MR. JUSTICE MOHAN LAL , JUDGE

J U D G M E N T

1. Petitioner a citizen of India and entitled to the protection of all his fundamental, constitutional and statutory rights enshrined in the Constitution of India was enrolled into the Indo-Tibetan Boarder Police (ITPB) on 29-11-1996, and while posted at Sheesh Mehal (Glass House) post near Jawhar Tunnel Qazigund he is alleged to have molested a women and is indicted in FIR No. 158 of 2000 for commission of offences punishable under sections 354/376/511 of RPC. Petitioner was tried under ITBP Force Act and was dismissed from his services on 06-10-2000 by an order issued by respondent No.4. By the medium of instant writ petition under Article 226 of the Constitution of India r/w Section 103 of the Constitution of J&K, petitioner has prayed for the following reliefs:-

(a) **Writ of Certiorari** for quashing:-

- (i) Proceedings of Summary Force Court;
- (ii) Order of dismissal from services dated 06-10-2000 issued by the respondent No.4 and
- (iii) Order dated 22-04-2001 issued by respondent No.3.

(b) **Writ of mandamus** commanding respondents to reinstate petitioner into service with all consequential/monetary and service benefits.

- 2.** Petitioner has averred in his writ petition that FIR No. 158 of 2000 u/ss 354/376/511 of RPC was registered against him at police station Qazigund for the allegations to have molested a civil women which charge sheet was pending trial in the court of Sessions Judge Kulgam. It is stated, that without waiting for final outcome of the above FIR, respondent No.4 directed for **“recording of evidence”** against the petitioner. In pursuant to the statement of petitioner recorded on 28.09.2000 wherein petitioner denied all the allegations, statement of petitioner was recorded by ROE without first cautioning in that he is not bound to make statement as required under rule 50(3) of ITBP Force Rules 1994, even then petitioner pleaded innocence before the ROE. Prior to the passing of order of recording of evidence, respondent no.4 was bound to hear the charge as provided in Rule 45 but the Commanding Officer did not hear the charge, hearing of the charge by Commanding Officer can be dispensed with under rule 45(2) if charge against the officer or subordinate officer is of serious nature, but respondent no.4 could not dispose with hearing of charge against the petitioner who was only constable, Rule 44 r/w 45 of ITBP Force Rules were not followed by the respondents.
- 3.** Vide office memorandum dated 30-09-2000 petitioner was erroneously charge sheeted u/ss 26&43 of ITPB Force Act 1992 for unbecoming conduct and violation of good order and discipline, whereas, allegations against petitioner were of molesting a civil women and therefore charge u/s 49 of ITPB Act r/w Section 354/376/511 RPC was required to be framed and not for violation of good order and discipline, the framing of erroneous charge sheet has caused prejudice to the petitioner.
- 4.** Respondent No.4 convened Summary Force Court (SFC) in which petitioner is said to have pleaded guilty, petitioner had never pleaded guilty and his statement was not recorded by SFC, had petitioner pleaded guilty his statement in verbatim was required to be recorded by the SFC, even signatures of petitioner in token of having made statement were not taken by SFC, petitioner was never produced before the SFC and only paper trial was conducted, there was no occasion for pleading guilty by the petitioner who had denied all the charges and in such eventuality Summary Force Court (SFC) was required to advise the accused not to plead guilty but in the proceedings of SFC it is not mentioned that petitioner was even advised not to plead guilty, thereby, Rule 143(2) of ITBP Rules has been seriously violated by respondent No.4 who

dismissed the petitioner from services vide order No. 22 Bn ITBP/Estt.-2/SFC/2000-110 dated 06-10-2000 on the ground, that petitioner has been found guilty of charges.

- 5.** Petitioner moved applications to respondents 3&4 for supplying the proceedings of SFC, respondent No.3 vide order dated 22-04-2001 rejected the statutory petition of the petitioner on the ground that petitioner had admitted both the charges before SFC. Therefore, petitioner made representation to respondent No.2 (DG ITBP) who also rejected the representation of petitioner on 27-12-2001 on the ground, that as per Section 131 r/w Rule 168 petitioner can only submit one petition. The copies of SFC were supplied to the petitioner vide letter dated 14.09.2001 after about 1 year of the order of dismissal dated 06.10.2000, had the proceedings been supplied earlier, petitioner could have been in a position to make effective representation to respondent no.3, the delay in supplying the proceedings has caused serious prejudice to the petitioner in making effective statutory petition.
- 6.** Respondent No.4 (Commandant 22 Bn. ITBP) has filed objections to the writ petition contending therein, that the petitioner has not come to the court with clean hands, has misstated and misrepresented the facts, petition suffers from delay & laches as the same has been filed after 12 years and deserves to be dismissed. It is contended, that petitioner while performing the sentry duty at Sheesh Mehal (Glass House) post Qazigund J&K molested Ms. Naseema w/o Rehmat Ullah Kahn, the said act of petitioner was offence under ITBP Force Rules Act 1992, petitioner was required to be dealt immediately otherwise it would have affected the image of ITBP in the eyes of general public, petitioner was dealt under the provisions of ITBP Act and rules, he was heard by the Commandant and record of evidence against him vide order dated 19-09-2020, considering the record of evidence petitioner was tried by SFC, on arraignment to the charges he pleaded guilty, provisions of Rule 143 of ITBPF Rules 1994(General plea "Guilty" or "Not Guilty") was also complied with, petitioner was found guilty of the charges and punishment was passed accordingly. It is further contended, that petitioner was heard under Rule 45 of ITBPF Rules, he was tried for offences u/s 26 & 43 of ITBPF Rules of the Act, petitioner is facing trial in Civil offences punishable u/s 354/376/511 RPC pending trial in civil court, so rightly the authorities have not issued charge sheet to the petitioner for the said offences, procedure was adopted strictly as per rule and

no illegality has been conducted in the proceedings. It is contended, that petitioner pleaded guilty to the charges and was tried by SFC who is a Commandant and constitutes court, petitioner was given opportunity but he denied for application of any friend, but despite that Inspr./GD Tashi Tundup Negi was detailed as friend of the accused by the court as per provisions of ITBPF Act & Rules, since petitioner has pleaded guilty to the charges there were no requirement of examining the lady as such, disciplinary proceedings were instituted against the petitioner who was heard by respondent No.4, record of evidence was ordered against him vide order dated 29-09-2000, on pleading voluntarily guilty, provisions of Rule 143 of ITBPF Rules 1994 were complied with, petitioner was found guilty and awarded sentences of dismissal for services on 06.10.2000.

- 7.** Petitioner has filed rejoinder affidavit on 27.03.2018 stating therein, that Article 20 of the Constitution of India has been violated, he was tried by the SFC for molestation of a civil woman and punished with dismissal from services and on the same charge he was tried by Principal Sessions Judge Kulgam and acquitted of all the charges on 27-06-2014, therefore, petitioner could not be prosecuted and punished for the same offence more than once. It is submitted, that petitioner was not tried in accordance with ITBP Act and Rules, it was incumbent upon respondent No.4 to make a reference to the officer deputed to convene Petty Force Court for the trial of alleged officer as provided u/s 6(2) of ITBP Act 1992, there was no grave reason for immediate action, even no reason has been assigned by respondent No.4 for not making reference to the officer empowered to convene Petty Force Court as such proceedings conducted by respondent No.4 is vitiated. It is contended, that petitioner has not made any confessional statement before the officer who recorded the Record of Evidence as such the Summary Force Court was required not to accept the alleged plea of guilty as provided under Rule 143 of the ITBP Rules. It is submitted that Section 26 of the ITBP Act was not applicable to petitioner, section 26 deals with unbecoming conduct of an officer or subordinate officer, petitioner was a constable and not an officer or subordinate officer as defined u/s 2(s) and 2 (v) of the ITBP Act 1992, petitioner was placed under suspension on the ground that a case regarding misbehavior (attempt to rape) with one lady while on duty is under investigation, petitioner has not pleaded guilty before the Summary Force Court and no signatures of petitioner in support of plea of guilty was

obtained, that the allegations of attempt to rape was a civil offence punishable u/s 49 of the ITBP Act, respondent No.4 was required to make a reference to the officer empowered to convene a Petty Force Court before holding of trial by the Summary Force Court as required u/s 86(2) of the ITBP Act, no adherence to the section 86(2) of the ITBP Act vitiate all the proceedings.

- 8.** Sh. R.K. Bhatia Ld. Counsel for petitioner, has sought quashing of proceedings of Summary Court Force coupled with order of dismissal of service of the petitioner dated 06-10-2000 issued by respondent No.4 & order dated 22-04-2001 issued by respondent No.3, by vehemently canvassing arguments, that Rule 45 of ITBP Rules has been violated by respondent No.4 as prior to recording of evidence respondent No.4 (Commandant of the petitioner) was required to hear the petitioner on charge; as per Rule 50(3) of ITBP Rules petitioner was required to be cautioned before making statement but there is nothing on record to show that any such warning was ever give to petitioner, moreso, there is noting on record to indicate that petitioner was granted any opportunity to lead defense evidence during the recording of evidence; Rule 50(9) of ITBP Rules has been violated as no certificate has been issued by the officer who recorded the evidence regarding correctness of “recording of evidence”. It is argued, that Rule 142 of ITBP Rules has been violated as the certificate at the bottom of proceedings of Summary Force Court does not show that anyone has explained to the petitioner the general effect of plea of guilty; Rule 143(2) of ITBP Rules has been violated by respondent No.4 because it is nowhere mentioned in the proceedings of SFC that petitioner was ever advised to withdraw or not plead guilty. It is moreso argued, that if an accused person pleads “guilty” that plea shall be recorded as finding of the court, but before it is recorded, the court shall ascertain that the accused understands the nature of charge to which he has pleaded guilty and shall inform him of general effect of that plead and in particular of the meaning of the charge to which he has pleaded guilty and shall advise him to withdraw the plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty. It is argued, that pleading of guilty means an admission of an accused having committed offence for which he is charged, the plea shall be recorded as the finding of the court in the words used by accused or nearly as possible in the words used by accused, such a recording will enable the party seeking justice to know whether higher authorities or the confirming authority to determine

whether the plea recorded really amount to admission of guilt, the requirement of recording a plea as stated above is mandatory and violation thereof vitiates the trial. To support his arguments, Ld. Counsel for petitioner has relied upon the judgments reported in, (i) **1991 KLJ 513** [Union of India & Ors Vs Ex-Havildar Clerk Prithal Singh & Ors], (ii) **1992 (1) GauLR 445** [Sadacharan K and 18 Others—Petitioners **Versus** Union of India and Others—Respondents] & (iii) **RLW 1997(2) Raj 1209** [Ex-Sepoy Chander Singh—Appellants Vs. Union of India(UOI) and Ors—Respondents] .

9. Ld. Counsel for respondents has supported the proceedings of Summary Force Court and order of dismissal of petitioner dated 06-10-2000 by strenuously portraying arguments, that petitioner has not come to the court with clean hands, has misstated and misrepresented the facts, there is a delay of 12 years in filing the petition, allegations against petitioner are in regard to molestation of women namely Ms. Naseema for which petitioner was tried by SFC on the charges for offences u/ss 26 r/w 43 of ITBPF Rules wherein petitioner pleaded guilty, moreso, Rule 143 of ITBP Rules has been complied with as petitioner has been held guilty to the charges and was accordingly punished which led to his dismissal from services on 06-10-2001.
10. I have heard Ld. Counsel for the parties and perused the record before me. Sh. R.K. Bhatia Ld. Counsel for petitioner has contended, that petitioner never pleaded guilty to the charges, petitioner was never informed about the nature of charge to which he was required to plead guilty, there was no occasion for pleading guilty as the petitioner has denied all the charges and in such eventuality Summary Force Court (SFC) was required to advise petitioner/accused not to plead guilty, however in the proceedings of SFC it is not mentioned that petitioner was ever advised not to plead guilty, therefore, Rule 143(2) of ITBP Rules have been seriously violated for which the punishment of dismissal of the petitioner requires to be set aside. Sh. Vishal Sharma Ld. DSGI for respondents per contra has argued, that petitioner has pleaded guilty to the charges and provisions of Rule 143 of ITBPF Rules 1994 was complied with, petitioner was tried by SFC for offences u/s 26 & 43 of ITBP Rules as he was facing trial in civil offences punishable u/s 354/376/511 RPC, since petitioner has pleaded guilty to the charges there was no requirement of examining the lady (victim), record of evidence was order against the petitioner and on pleading voluntarily guilty provision of Rule 143

of ITBP F Rules of 1994 was complied with, petitioner was found guilty and accordingly awarded dismissal from services on 06-10-2000.

- 11.** It will be my endeavor to appreciate the judgments relied upon by Ld. Counsel for petitioner to ascertain the procedure for recording “plea of guilty of accused” and whether such proceedings of rule position is mandatory in nature or not?

In 1991 KLJ 513 [Union of India & Ors Vs Ex-Havildar Clerk Prithpal Singh & Ors] relied by Ld. Counsel for petitioner, J&K High Court while quashing the proceeding of Summary Court Marshal and appreciating Rule 115(2) of Army Rules whereby respondent Ex-Havildar Clerk Prithpal Singh of J&K Light Infantry Regiment at Srinagar was tried on 3 charges, reduced in rank and was dismissed from services on May 2, 1983 and observing that Rule 115 (2) of Army Rules dealing with procedure for recording plea of guilty of accused is mandatory in nature, in head note of the case law and in para 8 of the judgment held as under:-

Army Rules—Rule 115(2)—Procedure for recording ‘plea of guilt of the accused.

Whether mandatory in nature or not? Held—Mandatory in nature.

At the time of recording the ‘plea of guilt’ of the accused in Summary Trial as well as the accused should be necessarily informed of the nature of charges leveled against him and the court should ascertain that the accused has understood the nature of the charge to which he pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of the charge to which he pleads guilty. The court should further require to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to the plead not guilty.—Non fulfillment of such a procedure violates and said rule and vitiates the trial as the rule is mandatory in nature.

8. The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to clause (2) of rule 115. **Under this mandatory provision the court is required to ascertain before it records plea of guilt of the accused, as to whether the accused understands the nature of charge to which he has pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of charge to which he has pleaded guilty.** The court is further required under the provision of law to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the sentence and such signatures shall

authenticate whole of the proceedings. It comes out from this rule that the signing of the proceedings by the court shall amount to authentication of the same. We may take it that the signatures of the accused are not required even after recording plea of guilt but as a matter of caution same should be taken. But in order to come to a finding as to whether compliance of Sub-Rule 2 of Rule 125 has been made **there should have been some certificate of the court to the effect or at least some minutes pointing out that fulfillment of the procedure.** Nothing is coming out from record in this effect. It is certainly a violation of the above said rule. Respondent accused is clamoring from the very beginning regarding holding of a fair trial in his case and he has also taken a specific stand that he never pleaded guilty. He addressed so many communications to the court as well as to the authorities for providing him friend of the accused of his choice and other facilities for the trial and in such circumstances recording of plea of guilty by the court without strictly following rule 115 is to be viewed with suspicion. However on record there are signatures of the respondent-accused showing that he willingly pleaded guilty.

In 1992 (1) GauLR 445 [Sadacharan K and 18 Others—Petitioners **Versus** Union of India and Others—Respondents] relied by Ld. Counsel for petitioner, Division Bench of Gauhati High Court while appreciating Rule 115 of Army Rules 1984 and observing that the Army Court is required to record the plea of guilt of accused in the words or as nearly as possible in the words used by accused which Rule is mandatory in nature and violation thereof vitiates the trial, conviction and penalty, in paras 6, 8,9,11 of the judgment held as under:-

(6.) Under sub-rule (1) of rule 115 of the Army Rules, 1984, for short, 'the Rules' provides: **"The accused person's plea-'Guilty' or 'Not guilty'** (or if he refused to plead, or does not plead intelligibly either one or the other, a plea of 'Not guilty')-**shall be recorded on each charge"**. (emphasis added), Sub rule (2) of rule 115 provides, inter alia, that, if an accused person pleads 'Guilty', that plea shall be recorded as the finding of the Court.

(8.) Pleading of 'guilty' means an admission of an accused having committed the offence with which he is charged. Under section 115(2) the plea of guilty shall be recorded as the finding of the Court. The use of expression 'does not plead intelligibly' in rule 115(1) indicates that the plea must be clear and unambiguous. Whether the plea is clear and unambiguous, or, whether the accused pleads or does not plead intelligibly, will depend on the words used by the accused. **A mere entering or recording the word 'guilty' may mean Court's own conclusion or interpretation.** Therefore, the clause "if the accused pleads guilty, the plea shall be recorded as the finding of the Court" means that the **Court shall record the plea in the words used by the accused, or, the Court shall record the plea as nearly as possible in the words used by the accused.** Such a recording will enable the party seeking justice to know as well as the higher authority or the confirming authority to determine whether the plea recorded really amounts to an admission of guilt.

(9.) Coming to the cases on hand, it appears that the accused persons pleaded guilty, but the **Court has not recorded the plea in the words, or, as nearly as possible in the words, used by the accused. Therefore, there was procedural impropriety. The requirement of recording of the plea as stated above is mandatory & the violation of it will vitiate the trial, conviction or penalty.** The view taken by us finds support from a decision of the Supreme Court in Mahanta Kaushalya Das Vs. State of Madras, AIR 1966 SC 22 .

(11.) For the forgoing reasons, the trial, conviction and sentences are set aside. The cases are sent back to the summary court martial for disposal of the matter afresh in the light of the observations made above.

In RLW 1997(2) Raj 1209 [Ex-Sepoy Chander Singh—Appellants Vs. Union of India(UOI) and Ors—Respondents] relied by Ld. Counsel for petitioner, High Court of Rajasthan while observing that Army Rules 34,36&115(2) are mandatory in nature and non-observance thereof vitiates the trial in paras 14,18,25 of the judgment held as under:-

14. From the above narration of facts, the first question which arises for determination is whether under Rule 4(1) of the Army Rules, the mandatory requirement of warning of holding the trial after a notice of 96 hours had been complied with or not or whether any notification had been issued under [Section 9](#) of the Army Act for declaring this unit to be a unit "[On Active Service](#)".

18. The provisions of this Rule have salutary effect. **The accused is to be told the consequence of the fact if he pleads "guilty"**. It is mandatory on the part of Commanding Officer before he records the plea of "guilty" to ascertain that accused understands the nature of the charge to which he pleaded guilty and it is also obligatory on the part of Commanding Officer/Court to inform him of the general effect of that plea and in particular of the meaning of the charge to which he has pleaded guilty and of the difference in procedure which will be made by his pleading of guilty and **shall advise him to withdraw that plea if it appears from the summary of evidence or otherwise that the accused ought to plead not guilty.** To support the proposition, counsel for the petitioner relies on 1989 (3) SLR, 405 ([Uma Shanker Pathak v. Union of India \(All.\)](#)) wherein the Division Bench 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 the 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 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."

12. The proceedings extracted above do not, in our opinion, fulfil the requirement of the law. **A bald certificate by the Commanding Officer that "the provisions Army Rule 115(2) are here complied with" is not enough.** As the note quoted above and underlined by us

would bear 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 in procedure. The instructions to the court printed on the proforma quoted in Annex. 1 (copy of the impugned order stating that "question to the accused and his answers both will be recorded verbatim as far as possible "make this amply clear.

25. For the reasons and in view of the above discussion, **that a definite prejudice had been caused in non-observing the mandatory provisions of the Army Rules which were of mandatory nature.** For the reasons mentioned, as the writ petition is to be allowed, therefore, there is no necessity to go into the other grounds of attack made by the petitioner in writ petition, writ petition is allowed and the impugned order of punishment and proceedings of summary court martial trial dated 17.9.90 (Annex. 4) punishing the petitioner for 6 months rigorous imprisonment and dismissing him from service is set aside. The petitioner has already suffered the imprisonment for six months for which no monetary compensation shall be adequate. However, in the circumstances, he is entitled to costs of petition which is assessed as Rs. 10,000/-. The petitioner who was working as a cook, shall be entitled to all benefits including reinstatement in service, which shall be made to him within 2 months from the date of receipt of certified copy of this order. The writ petition is allowed as observed above.

Ratios of the judgments of **“Prithpal Singh”, “Sadacharan K” & “Chander Singh’s”** cases (Supra) relied by Ld. Counsel for petitioner, make the legal proposition manifestly clear, “that Army Rules are mandatory in nature, Army Court shall record the plea in the words used by the accused or nearly as possible in the words used by the accused, the requirement of recording of the plea is mandatory and violation of it will vitiate the trial, conviction or penalty, the accused is to be told the consequence of the fact if he pleads "guilty", court shall advise the accused to withdraw that plea if it appears from the summary of evidence or otherwise that the accused ought to plead not guilty”. While applying the ratios of the judgments (Supra) to the facts of the case in hand, the foresaid Army Rules when read in conjunction with the ITBP Rules aforesaid, it can be safely held, that the ITBP Rules viz; Rule 45, Rule 50(3), Rule 50(9), Rule 142 & 143 etc. are also mandatory in nature and violation thereof vitiates the trial, conviction and penalty imposed upon the accused/employee. **Annexure-A** to the petition in the case in hand, is copy of the statement of petitioner wherein nowhere the petitioner has pleaded guilty. **Annexure-B** to the petition is the copy of office memorandum which shows that on 30-09-2000 petitioner was informed by respondent No.4 Sh. J.V.S. Choudhary Commandant 22nd BN, ITBPF THQ c/o 56 APO about the framing of charge when petitioner was posted at duty at Shishmehal Post (Qazigund) and he molested a civil woman, and Summary Force Court proceedings were initiated against the

petitioner who was asked to give the list of witnesses in his defense. It is apt to mention here, that on 29-09-2000 petitioner was charged for on two counts viz; Charge-1 ITBP Act 1992 r/w Section 26, that on 28.09.2000 petitioner while on ROP duty with L.M.G. at Shishmehal (Glass House) molested a civil women namely Naseema which act of petitioner amounted to unbecoming conduct being member of force and Charge-2... ITPB Act 1992 R/w Section 43 regarding violation of good order and discipline. **Annexure-D** (pages 19 to 23) of the petition are copies of the proceedings conducted by Summary Force Court (SFC) wherein at page 20 the plea of guilt of petitioner/accused has been recorded and it has been shown that petitioner has pleaded guilty to the charges u/s 26 and 43 of ITBPF Act 1992. Rule 45 of ITBPF Rules has been violated by respondent No.4 as prior to recording of evidence respondent No.4 has not heard the petitioner on the charge. Rule 50(3) ITBPF Rules has also been violated as there is nothing on record to show that petitioner was cautioned before making the statement or any warning was given to him. Rule 50(9) of ITBPF Rules has been violated as no certificate has been issued by the officer who recorded the evidence regarding the correctness of recording of evidence. It is apt to reiterate here, that record reveals that there is no certificate appended at the bottom of proceedings of Summary Force Court (SFC) that anyone has explained to the petitioner the general effect of plea of guilty. Vide Rule 143(2) of ITBPF Rules, the Court of respondent No.4 was further required under this provision of law to advise petitioner/accused to withdraw that plea of guilt if it had appeared to respondent No.4 from summary of evidence recorded that petitioner/accused ought to plead not guilty. Page 21 of the petition relates to the proceedings of plea of guilty. Rule 143 of ITBPF Rule relates to plea of "Guilty" or "Not Guilty". Sub-Rule 2 of Rule 143 mandates that the court shall ascertain that accused understands the nature of charge to which he has pleaded guilty and shall also inform him effect of that plea and meaning of the charge. In the case in hand, nothing has been placed on record that court of respondent no.4 has ascertained from petitioner/accused that whether he understands the nature of charge to which he has pleaded guilty and even the petitioner has not been informed regarding the effect of such plea of guilty and meaning of the charge. Moreso, record further demonstrates, that respondent No.4 has not advised the petitioner that he ought not to have pleaded guilty. Furthermore, it has not come on record that the plea of guilty of petitioner/accused has been

recorded by respondent No.4 in the words used by the petitioner or as nearly as possible in the words used by him. Therefore, there has been procedural impropriety. The requirement of recording of the plea of guilt as stated above is mandatory in nature and violation of it has vitiated the trial and penalty imposed by respondent No.4 upon petitioner/accused. It is unambiguously reiterated here, that petitioner/accused who was facing criminal charges in the court of Ld. Pr. Session Judge Kulgam in aforesaid FIR No. 156/2000 of Police Station Qazigund for alleged commission of offences u/ss 376/354/511 RPC registered by the complainant namely Naseema Akhter for which petitioner was charged u/s 26 & 43 of ITBP Act 1992 and dismissed from services on 06-10-2000, has been acquitted of the charges by the trial court vide its judgment dated 17.06.2014 r/w order dated 13-10-2014.

12. For the foregoing reasons, and in view of the above discussion, a definite prejudice has been caused to the petitioner and the conclusion is therefore inevitable, that since there has been no compliance of the mandatory provisions of ITBPF Rules aforesaid, the trial of petitioner alongwith the whole proceedings of Summary Force Court (SFC) conducted by respondent No.4 stand vitiated. For the reasons aforesaid, writ petition stands allowed. Accordingly, by a writ of certiorari the proceedings of Summary Force Court (SFC) as well as order of dismissal of the petitioner from services dated 06-10-2000 issued by respondent No.4 and order dated 22-04-2001 issued by respondent No.3 stand quashed. Further by a writ of mandamus, the respondents are commanded to reinstate the petitioner into service forthwith on providing copy of the judgment. Petitioner shall be entitled notional benefits to his service from the date of his dismissal from services till his acquittal dated 17-06-2014 (r/w order dated 13-10-2014), and thereafter, shall also be entitled to all the consequential monetary and service benefits.

13. Disposed off accordingly.

Srinagar:
29.05.2023
Issaq

(Mohan Lal)
Judge

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No