

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).29083/2008

(From the judgement and order dated 31/03/2008 in SA No.
139/2007 of The HIGH COURT OF UTTARANCHAL AT NAINITAL)

NAIK PADAM BAHADUR GURANG

Petitioner(s)

VERSUS

CHIEF OF ARMY STAFF & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP,SEEKING PERMISSION TO PLACE ON
RECORD REJOINDER AFFIDAVIT and prayer for interim relief and office
report))

Date: 15/03/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr.Virendra Rawat,Adv.,
 Mr. Arun Kumar Beriwal,Adv.

For Respondent(s) Mr.Vivek Tankha, ASG
 Mrs. Anil Katiyar,Adv.,
 Mrs. Niranjana Singh,Adv.,
 Mr. Ajay Sharma,Adv.
 Mr. B. Krishna Prasad,Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

In Pursuance to the request of this Court, Chief of
the Army Staff has re-considered the whole matter and
passed the following order:-

"1.Whereas, Number 136151296 Ex-Naik Padam
Bahadur Gurung was tried by Summary Court Martial
(SCM) on 18 January 1992, for committing an
offence under Army Act Section 39(a) for
'ABSENTING HIMSELF WITHOUT LEAVE'. He pleaded
guilty to the charge and the court after
complying with the provisions of the Army Rule
115(2) found him accordingly and sentenced
him to undergo six months rigorous imprisonment
in Civil Jail, reduction to the rank and
dismissal from service. Commander 50
(Independent) Para Brigade however, remitte4d
four months Rigorous Imprisonment out of the six
months Rigorous Imprisonment awarded by the
court.

2.The individual submitted a petition dated 30
April 1992, under Army Act Section 164(2) against
finding and sentence awarded by SCM which after
due consideration was rejected by GOC-in-C

Central Command vide Order dated 27 Jul 1992.

3.The individual then filed a writ petition NO.11982/1993 whereupon Hon'ble High Court of Uttaranchal at Nainital vide its order dated 12 June 2006, set aside both the above mentioned orders I.e. dated 18 January 1992 and 27 July 1992 and directed to pay 25 per cent of the amount of salary etc. considering and treating as if he was in service with pensionary and other benefits.

4.The said order dated 12 June 2006 was challenged by way of special appeal No.139/2007 before Hon'ble High Court of Uttaranchal whereupon Hon'ble Court after considering the matter in its entirety vide their order dated 31 March 2008, set aside the said order and affirmed the aforesaid two orders dated 18 January 1992 and 27 July 1992.

5.The individual thereafter approached Hon'ble Supreme Court by way of SLP(Civil) No.29083/2008 wherein during hearing on 14 December 2009; the apex Court directed to reconsider the matter. In deference to the directions of Hon'ble Apex Court the entire case has been reviewed again. However, no illegality in the proceedings of SCM is found as has been observed by Hon'ble High Court of Uttaranchal also. The individual defying the orders of his senior officer proceeded on leave without being sanctioned and thus was rightly found guilty of committing offence of absence without leave. However, considering the nature and gravity of the offence the sentence awarded is considered harsh and hence deserves sympathetic reconsideration.

6. NOW, THEREFORE, purely on humanitarian grounds, I remit the punishment of dismissal awarded to him with the condition that he shall be deemed to have been discharged from the service with effect from the date his dismissal took effect. The other punishment awarded as already remitted by Commander 50 (Independent) Para Brigade will however, stand without any interference. The aforesaid relief will enable the individual to rehabilitate in civil society and also earn terminal benefits if eligible.

Signed at New Delhi on this Tenth day of Feb.2010.

Sd/-

(Deepak Kapoor)
General
Chief of Army Staff"

In view of the order dated 10.2.2010 passed by General, Chief of the Army Staff, nothing further survives in this petition. The special leave petition is accordingly disposed of.

Before, we part with the case, we would like to place on record our appreciation for proper consideration of this matter by the General, Chief of the Army Staff. This case is decided on the facts of this case.

(V.K Sharma)
AR-cum-PS

(Neeru Bala Vij)
Court Master