

**RESERVED**  
**AFR**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**TRANSFERRED APPLICATION No. 10 of 2017**

Wednesday, this the 03<sup>rd</sup> day of August, 2022

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

Praveen Kumar S/o Sri Kamdev Prasad Singh, R/o 402,  
Air Force Station, Chakeri, Kanpur Nagar

..... Petitioner

Ld. Counsel for the : **Shri Om Prakash**, Advocate.  
Petitioner

Versus

1. Union of India, through Secretary, Ministry of Defence, Bharat Sarkar, New Delhi.
2. Chief of the Air Staff.
3. Air Officer-in-Charge Personnel, Both at Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi.
4. Air Officer Commanding, Air Force Record Office, New Delhi.
5. Commanding Officer, 1 Base Repair Depot, Air Force Station, Chakeri, Kanpur Nagar.
6. Air Officer Commanding, 402, Air Force Station, Chakeri, Kanpur Nagar.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate

Respondents. Central Govt. Counsel

**ORDER**

1. Being aggrieved with order dated 03.04.2008 passed by Chief of the Air Staff (respondent No 2), order dated 06.10.2006 passed by AOP (respondent No 3) and order dated 17.10.2006 passed by AOC, AFRO (respondent No 4) petitioner had filed Civil Misc Writ Petition No 61593 of 2006 in the Hon'ble High Court of Judicature at Allahabad which was dismissed on the ground of alternative remedy vide order dated 16.11.2006. Thereafter, the petitioner filed Special Appeal No 85 of 2007 in the Hon'ble High Court of Judicature at Allahabad which was also dismissed vide order dated 01.02.2007 with observations that in the event if an appeal is preferred by the appellant the same may be considered and disposed of in accordance with the law expeditiously. After rejection of his appeal vide order dated 03.04.2008 he filed Civil Misc Writ Petition No 59184 of 2008 in the Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 10 of 2017. The petitioner has made the following prayers:-

(i) Issue an order, direction or writ in the nature of certiorari, call for record and quash the order dated 03.04.2008 passed by Chief of the Air Staff, respondent No 2 (Annexure '1').

(ii) Issue an order, direction or writ in the nature of certiorari, call for record and quash the order dated 06.10.2006 passed by AOP, respondent No 3, order dated 17.10.2006 passed by AOC, AFRO, respondent No 4 and consequently discharge proceedings undertaken by AOC, 402 Air Force Station respectively (Annexure '12').

(iii) Issue an order, direction or writ in the nature of mandamus and stay the operation and effect of discharge order dated 06.10.2006 passed by AOP, respondent No 3 (Annexure '12').

(iv) Issue an order, direction or writ in the nature of mandamus and direct the respondents to reinstate the petitioner in service with all consequential benefits.

(v) Issue any other writ, order or direction, which this Hon'ble Court may deem just and expedient in the interest of justice.

(vi) Award cost of this petition in favour of the petitioner.

2. Brief facts of the case are that the petitioner was enrolled in the Indian Air Force (IAF) on 11.05.1994 as an airman. He was married with Miss Vandana on 27.01.2003 as per Hindu customs. While posted at Air

Force Station, Hakimpet, Secunderabad the petitioner was alleged to have illicit relations with Miss Purnima D/o Smt G Yashoda. A complaint dated 02.02.2005 was received from Smt G Yashoda stating that her daughter was missing and was expected to be staying with an Air Force employee. On receipt of complaint an inquiry was conducted which revealed that the petitioner and Miss Purnima opened a joint account No 004801503176 in ICICI bank, Secunderabad branch. Meanwhile the petitioner was posted out to 1 Base Repair Depot, Air Force Station, Kanpur where a Court of Inquiry (C of I) was conducted on 06.05.2005 in which 07 witnesses took part including the petitioner, his wife Smt Vandana and Miss Purnima participated and submitted their written statements. In the said C of I her wife Mrs Vandana levelled allegations against the petitioner that her husband had illicit relations with Miss Purnima but Miss Purnima denied having illicit relations with the petitioner and submitted that she and the petitioner were good friends.

3. The C of I concluded on 01.06.2005 and findings were recorded. The petitioner was found as an unreliable character who misled the administration. The Presiding Officer recommended disciplinary action against the

petitioner. Accordingly, a Show Cause Notice dated 22.12.2005 was issued which was received by the petitioner on 11.01.2006 and replied on 29.05.2006. Thereafter, on approval of his discharge vide order dated 06.10.2006 he was discharged from service. This petition has been filed for petitioner's re-instatement in service after quashing orders dated 06.10.2006 and 17.10.2006 and 03.04.2008.

3. Learned counsel for the petitioner submitted that the petitioner and Miss Purnima undertook a computer course for six months in civil and during the said course they got acquainted with each other and after some time became good friends. He further submitted that being close friend the petitioner used to visit her house occasionally. It was further submitted that on a complaint made by mother of Miss Purnima, a C of I was convened to inquire into the alleged offence of bigamy and cheating. In the said C of I the petitioner was compelled to depose and was forcibly examined as first witness which was against Article of 20 (2) of Constitution of India and Rule 156 (2) of Air Force Rules. Statements of witnesses were recorded and after conclusion of C of I he was found not blameworthy of bigamy. However, he was discharged from service w.e.f.

10.11.2006 illegally under Section 20 of the Air Force Act read with Rule 15 (2) (g) (ii) of Air Force Rules.

4. Learned counsel for the petitioner further submitted that the petitioner was not provided opportunity to be present throughout the C of I to make statement and of giving evidence, he might have wished to give and of cross examining any witness. His submission is that statement of PW 2 to 7 were recorded in the back of the petitioner which was clear violation of Rule 156 (2) of Air Force Rules and principles of natural justice. Thus, keeping in view he further submitted that findings were recorded without proper deliberation. No proper reasons were assigned to disclose how the court directed itself in law and considered nexus, therefore findings recorded were improper.

5. Learned counsel for the petitioner further submitted that since the allegations of ill treatment, illicit relationship levelled by his wife Smt Vandana were retracted vide affidavit dated 23.01.2006, therefore the petitioner should not have been penalised. His other version is that reply to Show Cause Notice was taken under coercion within three days and he was denied just, fair and reasonable opportunity to make a proper and effective reply. He

further submitted that the Show Cause Notice mainly alleged for maintaining illicit relationship with Miss Purnima amounting to adultery. There is no evidence on record to specifically demonstrate that the petitioner and Miss Purnima were ever found in sexual relationship amounting to adultery, therefore the allegation was totally baseless and without evidence on record. Advancing his submission he further submitted that the petitioner has been discharged from service by way of punishment for his alleged misconduct. His discharge is not simplicitor rather, it is a dismissal in the garb of discharge and respondent No 3 has no jurisdiction to impose punishment of dismissal on the petitioner for the alleged misconduct.

6. Learned counsel for the petitioner further submitted that in this case neither any charge sheet was served nor trial was held and petitioner's case was high jacked by Air Headquarters bypassing the Commanding Officer. The C of I recommended for disciplinary action but the concerned authority instead of holding trial discharged the petitioner saying his services were no longer required. This itself is arbitrary and needs to be considered by the Hon'ble Court. He further submitted that Section 22 of Air Force Act provides that any person subject to Air Force Act

may be released, retired or discharged from the service by such authority and in such manner as may be prescribed. He submitted that Rule 15 (2) (g) (ii) does not specify manner in which a person may be discharged, therefore discharge of the petitioner under this Rule is arbitrary and ultra vires Section 22 of Air Force Act.

7. It was further submitted by learned counsel for the petitioner that Ms Purnima is an unmarried girl and she is mere a friend of the petitioner. They sincerely maintained an absolute sanctity of friendship and lived in two separate rooms whenever she required shelter in the event of her distress. He submitted that keeping in view that the petitioner was not found blameworthy by the C of I, the order of dismissal which is unjust and perverse be quashed and the petitioner be re-instated in service.

8. In rebuttal, learned counsel for the respondents submitted that the petitioner while serving at Air Force Station, Hakimpet developed friendship with Miss Purnima D/o Smt G Yashoda and it was continued throughout his tenure. In November 2002 on posting out to 8 FBSU the petitioner maintained relationship with Miss Purnima. Smt G Yashoda submitted complaint dated 02.02.2005 to Air Officer Commanding, Hakimpet, Secunderabad stating

that her daughter was missing and suspected to be staying with an Air Force Employee. On inquiry it was established that the petitioner and Miss Purnima opened a joint account in ICICI Bank, Secunderabad branch. It was also revealed that Miss Purnima while leaving her home town for Kanpur informed her mother that she had married to the petitioner and both were going to Bangalore. He further submitted that in fact Miss Purnima was staying with the petitioner when the complaint was made. It was further submitted that the petitioner when appeared before the Chief Administrative Officer confessed having relations with Miss Purnima and stated that he will marry her later. On scrutiny it was found that the petitioner was already married with Smt Vandana on 27.01.2003 and this was notified by Part-II Order.

9. Learned counsel for the respondents further submitted that C of I was ordered to inquire into the offence of bigamy and cheating committed by the petitioner in which the petitioner deposed before duly constituted C of I and made statement. He further submitted that statement given by witness No 2 revealed that the petitioner threatened his wife not to make any

statement against him. He submitted that the C of I found his involvement in adultery, deliberately making false statements to Air Force Authorities, continued living out without family, providing incorrect living out address to unit authorities and keeping Miss Purnima at house No 402, New Friends Colony, Harjinder Nagar, Kanpur and misrepresenting her as his wife in civil locality. He further submitted that an additional C of I was conducted for correction of certain mistakes which found the petitioner blameworthy of cheating his wife by involving himself in keeping illicit relationship with Miss Purnima in presence of his wife Smt Vandana which was a disgraceful conduct on his part. In regard to above a Show Cause Notice was served upon the petitioner and on receipt of reply he was discharged from service under Rule 15 (2) (g) (ii) of Air Force Rules, 1969. He pleaded for dismissal of O.A. on the ground that the petitioner had illicit relationship with Miss Purnima and cheated his wife Smt Vandana which is a disgraceful act and for that discharge order dated 06.10.2006 does not suffer from any infirmity.

10. Heard Shri Om Prakash, learned counsel for the petitioner and Shri Ashish Kumar Singh, learned counsel

for the respondents and perused the original records produced in the Court.

11. The petitioner is married Air Force personnel who while serving at Hakimpet developed extra marital relationship with Miss Purnima, an unmarried girl of that locality. On posting out from Hakimpet he maintained the relations and in the year 2004 he was posted to Air Force Station, Kanpur. Miss Purnima left his residence and reached to Kanpur and stayed with the petitioner in civil hired accommodation. On 02.05.2005 a complaint was received from Smt G Yashoda, mother of the girl, stating that her daughter is missing and expected to be living with an Air Force employee. On inquiry it was found that the petitioner was having a joint account with Miss Purnima in ICICI bank at Hyderabad. Later, it was proved that Miss Purnima stayed with the petitioner at hired accommodation in Harjinder Nagar, Kanpur.

12. A C of I was convened which found him blameworthy of cheating his wife Smt Vandana as his wife during the C of I stated that she was threatened by her husband to keep silent and say whatever he wanted. The petitioner produced an affidavit from Smt Vandana stating that she wanted to withdraw her statement made during the C of I

but the said affidavit was proved wrong as her wife Smt Vandana denied having signed such an affidavit. An additional C of I was conducted which found that the petitioner displayed indecent and disgraceful conduct by having illicit relationship with Miss Purnima which was not in good order and Air Force discipline and recommended administrative action in terms of para 790 (a) (b) & C of the Air Force Act, 1964.

13. It is observed that the petitioner compelled her wife Smt Vandana to adjust with Miss Purnima at Kanpur railway station. The record also indicates that the petitioner threatened his wife not to disclose illicit relations with Miss Purnima during the C of I proceedings else she would be killed when on duty and nothing would happen to him. On receipt of a complaint from Smt Vandana an additional C of I was conducted as mentioned in para 12 above which found the petitioner blameworthy for the offence of cheating his wife Smt Vandana by involving himself in keeping illicit relationship with Miss Purnima in presence of Smt Vandana which was a disgraceful conduct on his part. The additional C of I also observed that his act was unbecoming a good Air Warrior in that he displayed indecent and disgraceful conduct by having illicit

relationship with Miss Purnima, which is not in good order and Air Force discipline.

14. Show Cause Notice dated 22.12.2005 was issued to the petitioner calling upon to show cause why the petitioner should not be discharged from the service under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969 which he replied after more than 05 months which clearly indicates that the petitioner was given sufficient time to reply to Show Cause Notice. As such contention of the petitioner that he was forced to give reply within three days is totally wrong and baseless. For convenience sake Show Cause Notice dated 22.12.2005 is reproduced as under:-

*"1. Whereas, you were enrolled in IAF on 11 May 94 and were assigned the trade of Instrument Fitter and are presently on the posted strength of 1 BRD, AF w.e.f. 22 Nov 04.*

*2. And Whereas, a Court of Inquiry was held at 1 BRD, AF to enquire into your alleged involvement in the offence of bigamy and cheating of Ms Purnima, daughter of Late Shri G Narhari, resident of H. No. 287/2, Machabolarum, Secunderabad.*

*3. And Whereas, the factum of bigamy, i.e. plural marriage is not established beyond reasonable doubt by the said Court of Inquiry.*

*4. And Whereas, the said Court of Inquiry has blamed you for:-*

*(a) displaying indecent and disgraceful conduct by having illicit relationship with Ms Purnima daughter of Late Shri G Narhari, being a married person.*

*(b) Deliberately making false statements to AF authorities knowing the said statements to be false.*

*(c) Continuing to live out without family without seeking prior permission from unit authorities.*

(d) *Providing incorrect living out address to the unit authorities that you were living out at 140, Kailash Nagar, Kanpur, and*

(e) *Keeping Miss Purnima at house No 402, Friends Colony, Harjinder Nagar, Kanpur and misrepresenting her as your wife in the civil locality.*

5. *And whereas, you have maintained illicit relationship with Ms Purnima even after your marriage with Ms Vandana, which amounts to adultery and thereby, displayed poor moral character and disgraceful conduct prejudicial to the community living in the Air Force.*

6. *And Whereas, by deliberately making false statements, providing incorrect living out address to AF authorities and continuing to live out without family, you have displayed conduct unbecoming of an Air Warrior.*

7. *And whereas, after considering the entire facts and circumstances of your case, the competent authority, i.e. the AOP, is of the opinion that you are liable to be discharged from the service under Rule 15 (2) (g) (ii) of AF Rules, 1969, for your above said misconduct.*

8. *Now Therefore, the competent authority has directed issue of this notice calling upon you to show cause as to why you should not be discharged from the service under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969, for the above mentioned acts of misconduct. Your reply, if any, to the show cause notice is to be submitted to your Commanding Officer within 14 days of the receipt of this show cause notice failing which it shall be presumed that you have nothing to urge in your defence and further action as deemed appropriate shall be taken accordingly against you. Copy of Court of Inquiry proceedings is available with Adjutant, 1 BRD, AF for your perusal, if you so desire”.*

15. On receipt of Show Cause Notice, the petitioner took casual leave and went to Hyderabad and his home town to persuade his wife Smt Vandana and Miss Purnima and thereafter, replied the Show Cause Notice after five months. Later, his discharge order was passed by the competent authority vide order dated 06.10.2006 which for convenience sake is reproduced as under:-

"1. Whereas, 763065-G Cpl P Kumar, Inst Fit was enrolled in the Indian Air Force on 11 May 94 as an airman for a period of 20 years and his initial term of engagement expires on 10 May 14.

2. And Whereas, the said Cpl P Kumar is on the posted strength of 1 BRD, AF Chakeri, Kanpur w.e.f. 22 Nov 04.

3. And Whereas, a COI was held at 1 BRD, AF to enquire into his alleged involvement in the offence of bigamy and cheating Ms Purnima D/o Late Sh G Narhari, resident H. No. 287/2, Machabolarum, Secumderabad.

4. And Whereas, the factum of bigamy i.e. plural marriage is not established beyond reasonable doubt by the said Court of Inquiry which however, held him blameworthy on various acts of misconduct perpetrated by him.

5. And Whereas, a Show Cause Notice vide No Air HQ/C23407/1483/PS dated 22 Dec 05 was served to the said NCO on 11 Jan 06 to show cause as to why he should not be discharged from the service under Rule 15 (2) (g) (ii) of AF Rules, 1969, for his alleged misconducts as brought out by the Court of Inquiry.

6. And Whereas, the said NCO has submitted a reply dated 29 May 2006 to the Show Cause Notice wherein he has brought out mainly the following:-

(i) That he had applied for leave in order to consult and deliberate with his friends and relatives before giving effective reply. But it was insisted that reply to the Show Cause Notice be submitted before proceeding on leave. Therefore, he could not make a proper and effective reply due to lack of such consultation.

(ii) That Smt Vandana, wife of the NCO had executed an affidavit dated 23 Jan 06 before the Notary Public of (Barh) Distt Patna stating that she had withdrawn all the allegations levelled against him for all purposes and that she did not want to prosecute any case against said Cpl Praveen Kumar.

(iii) That the findings of COI are beyond the terms of reference. He was not afforded adequate opportunity before the C of I wherein he could not watch demeanour of witnesses and cross-examination.

(iv) That nothing specific has been stated in Show Cause Notice which would amount to an illicit relationship. He never married Ms Purnima nor treated or represented her as his wife in any locality at any point of time. She has been a good friend of his and they maintained absolute sanctity of this relationship. The allegations of adultery are without any substance and proper application of mind.

(v) That he wanted to bring his wife Vandana on 27 Dec 04 which was not allowed by her relatives. However, he went and brought her on 17 Feb 05.

(vi) That the house which he hired was not liked by his wife Vandana and later he took over a new house of her choice. He had thought of submitting the application for change of address. There was no deliberate omission for any purpose.

7. And Whereas, after examining the reply, dated 29 May 06 submitted by the NCO and considering entire material on record, I find that the proceedings of the C of I were conducted in accordance with the laid down procedure and the said Cpl P Kumar was afforded full opportunity to vindicate his stand. As per Rule 156 of AF Rules, 1969, the NCO was given a copy of C of I proceedings and sufficient opportunity/time was allowed to him for submitting his reply in defence.

8. And Whereas, the airman, by having illicit relationship with Ms Purnima even after his marriage with Ms Vandana, has misconducted himself. The unscrupulous actions of the NCO for maintaining such illicit relationship are considered detrimental to the community living in the Air Force.

9. And Whereas, the other counts of blame viz. Deliberately making false statements, providing incorrect living out address to AF authorities and continuing to live out without family, also amount to serious misconduct. The justifications given by the NCO for these acts does not inspire confidence and is not tenable. The NCO has submitted an affidavit purportedly to have been executed by his wife, whereas the said Mrs Vandana has denied having executed any such affidavit.

10. And Whereas, I am of the opinion that the above said acts of misconduct of 763065-G Cpl P Kumar, Inst Fit render him unsuitable for further retention in the Air Force.

11. Now Therefore, in exercise of the powers vested under Section 22 of the Air Force Act, 1950, read with Rule 15 (2) (g) (ii) of the Air Force Rules, 1969, I order the discharge of 763065 Cpl P Kumar Inst Fit of 1 BRD from the service, as "His services no longer required-unsuitable for retention in the Air Force".

16. The Aforesaid discharge order issued by the competent authority clearly depicts the following:-

(a) The petitioner was having illicit relationship with an unmarried girl viz. Miss Purnima even when he was married with Smt Vandana.

(b) The petitioner made deliberate false statements to Air Force authorities knowing the statement to be false.

(c) The petitioner continued living outside without family without seeking prior permission from unit authorities.

(d) The petitioner provided incorrect living out address to the unit authorities that he was living out at House No 140, Kailash Nagar, Kanpur but instead he was residing at 402, Harjinder Nagar, Kanpur.

(e) The petitioner kept Miss Purnima at 402, Harjinder Nagar, Kanpur and misrepresented her as his wife in civil locality.

17. Though, allegations with regard to bigamy were proved wrong but the fact remained that the petitioner was having illicit relationship with Miss Purnima even after his marriage and thus, cheated his wife Smt Vandana as well as Miss Purnima which was considered detrimental to the Air Force community. In supplementary counter

affidavit respondents contention that the petitioner was living at Kanpur in civil hired accommodation alongwith Miss Purnima is trustworthy as it has been proved by witnesses No 1, 2 and 5. Petitioner has contended that the order of discharge is bad in law and not sustainable in the eyes of law as it has been passed in case of a habitual offender. In this regard we observe that though bigamy was not proved but in the circumstances he kept an unmarried girl with him in civil hired accommodation, that too when his married wife was present, is an unbecoming conduct of an Air Force employee.

18. We further take a note that after discharge from service the petitioner submitted redressal of grievance (ROG) dated 30.03.2007 to the Chief of the Air Staff but it was rejected vide speaking and reasoned order dated 03.04.2008 being devoid of merit. For convenience sake, order dated 03.04.2008 is reproduced as under:-

"1. Whereas, 763065-G Ex Cpl P Kumar was enrolled in the Indian Air Force on 11 May 94 and was assigned the trade of Inst Fit,

2. And Whereas, the said Ex NCO was discharged from the service by the order of AOP dated 20 Aug 07 under Section 22 of the Air Force Act, 1950 read with Rule 15 (2) (g) (ii) of the Air Force Rules, 1969 as 'His service no longer required-unsuitable for retention in the IAF.

3. And Whereas, at the time of his discharge from service, the said ex NCO was on the posted strength of 1 BRD, AF Chakeri, Kanpur.

4. And Whereas, the said ex NCO has submitted an ROG application dated 30 Mar 07. In the said petition, he has

challenged the order of his discharge, issued by the AOP dated 06 Oct 06 on the following grounds:-

(i) that the proceedings, finding and recommendations of the COI are beyond the terms of reference and therefore, without any jurisdiction.

(ii) that he was not given opportunity of being present throughout the COI in terms of Rule 156 (2) of the AF Rules, 1969. The evidence of the prosecution witnesses No 2 to 7 was recorded in his absence. The whole records about living out permission, change of address etc were not given to him.

(iii) that the Court of Inquiry proceedings were used against him for his discharge from the service in violation of Rule 156 (6) of the AF Rules, 1969. The proceedings of COI cannot be the basis of his discharge from service.

(iv) that the reply to the Show Cause Notice was forcibly taken within three days denying him reasonable opportunity to rebut the allegations and submit a proper reply.

(v) that the findings of the Court were not based on the evidence on record. The additional findings of the COI were in violation of Rule 154 (7) of AF Rules, 1969, as the CFOI re-assembled on 11 Jul 05 and no additional evidence was taken down or any witness examined.

(vi) that as per scheme of things in the AF Act, 1950, he should have been dealt with disciplinarily by way of court martial or administratively by dismissal/removal. His discharge from the service on account of commission of an offence is illegal, unjust and without any jurisdiction.

(vii) that his discharge from the service for misconduct is actually a dismissal and AOP has no jurisdiction to impose punishment of dismissal on the petitioner for the alleged misconduct. His past service record has not been taken into consideration for deciding his suitability for retention in the Air Force. Further no personal hearing was given to him before passing the discharge order.

(viii) that he was given Show Cause Notice for having illicit relationship with Miss Purnima which amounted to adultery and deliberately making false statements but he was given discharge on some other grounds. Therefore, he was not given proper opportunity to rebut the allegations in the right perspective.

(ix) that the allegation of unbecoming conduct punishable under Section 45 of the AF Act, 1950 is applicable to officers and warrant officers and not to him. After receipt of his reply to the Show Cause Notice dated 29 May 08, certain counts of misconduct stated in the Show Cause Notice were dropped. Further no proper show cause notice was given before passing the order of discharge.

(x) that his discharge from service is too harsh and disproportionate to the allegations found against him.

5. And Whereas, I have carefully examined the issues raised in the said petition vis-a-vis evidence on record of COI and Additional COI, the SCN issued to the petitioner and his reply thereto. The following legal and factual position emerges from such examination:-

(i) the COI was held in accordance with Air Force Law and all procedures were correctly followed. The COI has not at any stage exceeded its jurisdiction and has brought out all those irregularities which were disclosed in the course of investigation in terms of Para 791 (d) of the Regulations for the Air Force, 1964 (Revised edition).

(ii) the petitioner was called to be present during the proceedings of the COI and all his rights were informed to him in terms of Para 790 of the Regulations for the Air Force, 1964 (Revised Edition) and this fact has also been endorsed by him during the compliance of para 790 (a), (b), (c) and (e) of the Regulations for the Air Force, 1964. The petitioner had cross examined the second and the fifth witness. The records regarding living out permission, change of address etc, were also perused by him during the said inquiry as the entire proceedings of the COI were shown and perused by him.

(iii) A COI is a fact finding body. After the misconduct on the part of the petitioner was established, based on the entire evidence on record, he was issued with a Show Cause Notice. After judiciously considering the reply to the said Show Cause Notice submitted by the petitioner, the competent authority passed the discharge order in respect of the petitioner.

(iv) The petitioner was given full opportunity to prepare his reply to the Show Cause Notice which was served to him on 11 Jan 06 and his reply is dated 29 May 06. As per the documents on record, he was given a copy of the proceedings and about six months time to prepare and submit his reply.

(v) The additional COI was assembled to rectify the observations raised by the higher authorities. Further, before recording of findings, the petitioner was given an additional opportunity.

(vi) The issue whether the subject case is to be dealt administratively or by way of disciplinary action is to be decided by the competent authority based on the facts and circumstances of each case. The competent authority, in due exercise of its powers under Rule 15 of the Air Force Rules, 1969, dealt the case administratively and has issued the discharge order in accordance with law.

(vii) The petitioner was given adequate opportunity to present his case not only before the Court of Inquiry but also after issuance of Show Cause Notice. Further, it is not mandatory to give a personal hearing before passing of the discharge order.

(viii) The counts given in the Show Cause Notice and the discharge order are the same. The petitioner was blamed for having illicit relationship with Miss Purnima and other counts but not for adultery. The evidence on record is sufficient to establish and

*illicit relationship between Miss Purnima and the petitioner.*

*(ix) Unbecoming conduct is a serious offence and in the case of officers and warrant officers it is punishable under Section 45 of the AF Act, 1950. However, in the case of airman, for the said offence, he can be punished under Section 65 of Air Force Act, 1950 or any other administrative action as deemed fit. There is no requirement of issue of second show cause notice before passing of the discharge order.*

*(x) The action against the petitioner is commensurate to the misconduct on his part and in consonance with the provisions of the Air Force law.*

*6. And Whereas, after considering the entire material on record, I am of the considered view that ex Cpl P Kumar was discharged from the service after following due procedure prescribed in the Air Force Act, 1950 and Air Force Rules, 1969. Acts of misconduct committed by him rendered his further retention in the service undesirable. Hence, his discharge from the service is commensurate with the gravity of his misconduct.*

*7. Now Therefore, I reject the petition dated 30 Mar 07 submitted by 763065-G ex Cpl P Kumar, being devoid of merit. The said petition is disposed of accordingly”.*

19. Thus, in view of the facts explained in order dated 03.04.2008, we are of the considered opinion that petitioner's discharge was made correctly in accordance with Air Force Act, 1950 and Air Force Rules, 1969 and no injustice was done to him. It is obvious that though in the facts and circumstance of the case the bigamy was not proved but the petitioner was found blameworthy of having illicit relationship with Miss Purnima and he deceived his legally wedded wife Smt Vandana whose marriage was solemnised on 27.01.2003 as per Hindu rituals. In Black's Law dictionary the word 'marriage' has been defined as "*the civil status of one man and one woman united in law for life, for the discharge to each*

*other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex".* Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on. In Hindu law, marriage is considered to be sacrosanct, a holy union of two persons.

20. In our opinion the punishment of discharge/dismissal from service is commensurate to the gravity of misconduct on his part and in consonance with the provisions of the Air Force law.

21. In view of the above, the O.A. being devoid of merit is **dismissed**.

22. No order as to costs.

23. Pending misc applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 03.08.2022

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