

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No. 567 of 2020

Monday, this the 15th day of November, 2021

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

Rajendra Singh (Male) S/o Sh. Bhupal Singh R/o Permanent House No. 414 Gas Godam Road Near Resham Bagh Mukhani Haldwani, District-Nainital, presently posted at Maharajpur Air Force Station, Gwalior (MP).

..... Applicant

By Legal Practitioner – **None for the applicant.**
for the applicant

Versus

1. Union of India through Secretary in the Department of Defence, New Delhi.
2. Air Officer Command in Chief, Head Quarter Central Air Command, Indian Air Force, Bamroli, Prayagraj (Allahabad).
3. Wing Commander, Command Discipline Officer, Indian Air Force, Bamroli, Prayagraj (Allahabad).
4. Commanding Officer, 2253 Squadron Air Force, Air Force Station, Maharajpura (Gwalior).

..... Respondents

By Legal Practitioner - **Shri Rajesh Sharma**, Advocate
for the respondents Learned counsel for the Respondents

ORDER (ORAL)

1. Applicant has filed this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought the following reliefs:-

(i) To issue an order or direction quashing the order dated 09.01.2020 passed by respondent No 2 (Annexure No 1 to the application) and the order dated 16.01.2020 passed by respondent No 3 (Annexure 2 to the application).

(ii) Issue suitable directions directing the respondents to reinstate the applicant on his post of Leading Air Craftsman, which was being held by him on the date of dismissal, and the respondents be directed to pay him the entire salary with all consequential benefits.

(iii) The respondents be directed to permit the applicant to join his duties, subject to the ultimate decision of RLA No 570 of 2019, pending before the Hon'ble High Court of Nainital.

(iv) Any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

2. Brief facts of the case are that applicant while posted with 2253 Squadron, Maharajpura, Gwalior was married with Ms Bhawana Daramwal on 04.06.2015 at Haldwani. It is alleged that Ms Bhawana Daramwal was having illicit relations with one Sandeep as is revealed from Whatsapp chating (Annexure No A3). Her wife being found dead due to hanging on 10.08.2016 at Haldwani, Nainital, FIR No 96/2016 was lodged at Police Station Mukhani, District-Nainital under Section 304B of IPC was lodged against

applicant alongwith other members of his family. Based on the FIR, Charge Sheet under Section 304B, 302, 498A and 3/4 of Dowry Prohibition Act, 1961. On 27.11.2019 learned Sessions Judge delivered the judgment in which applicant was found guilty of the above offences and awarded Rigorous Imprisonment of 07 years under Section 304B, Rigorous Imprisonment of 03 years under Section 498A, Rigorous Imprisonment of 05 years under Section 3 of Dowry Prohibition Act, 1961 and Rigorous Imprisonment of 06 months under Section 4 of Dowry Prohibition Act, 1961. Since the conviction order dated 27.09.2019 was comprehensive and appropriately reasoned, Air Officer Commanding in Chief, Central Air Command (AOC-in-C HQ CAC) passed order dated 09.01.2020 for his dismissal from service in exercise of powers under Section 20 (3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969 after considering the facts. Consequently he was dismissed from the service on 17.01.2020. While in District Jail, Haldwani, applicant had requested copy of his dismissal order which was provided to him. A Criminal Appeal No. 570 of 2019 was filed against order dated 27.09.2019 before the Hon'ble High Court of Uttarakhand, Nainital and he was granted bail vide order dated 07.01.2020 (Annexure A-10). He was released on bail on 22.01.2020. Applicant again moved an application under Section 389 of Cr PC before the Hon'ble High Court of Uttarakhand, Nainital

and the Hon'ble Court vide order dated 28.02.2020 (Annexure A-12) suspended the execution of the judgment and order dated 27.09.2019. This O.A. has been filed to quash order dated 09.01.2020 and 16.01.2020 and reinstate him in service with all consequential benefits.

3. Submission of learned counsel for the applicant is that applicant had filed writ petition No. 422 of 2020 in the High Court of Uttarakhand, Nainital against order of his dismissal but it was disposed off giving a liberty to applicant to exhaust the remedy before the Hon'ble AFT, which he has availed by filing this O.A. in this Tribunal. His further submission is that applicant was present in the unit when the incident of her wife's suicidal death took place and he was not provided the opportunity of hearing before passing the impugned orders dated 09.01.2020 and 16.01.2020. His further submission is that while he was lodged in jail from 27.09.2019 till his release on 22.01.2020, the aforesaid order of his dismissal was passed which is contrary to the provisions of existing rules on the subject. He pleaded for quashing of impugned orders dated 09.01.2020 and 16.01.2020 and re-instatement him into service.

4. On the other hand, learned counsel for the respondents submitted that applicant was dismissed from service in terms of Section 20 (3) of Air Force Act, 1950 read with Rule 18 (1) of Air Force Rules, 1969 on the ground that he was convicted under

Section 304B, 498A and Section 3/4 of IPC. His further submission is that the matter was appropriately examined at Headquarters Central Air Command and it was observed that as per para 687 of Regulations for the Air Force, which lays down that the conviction of applicant shall be reported to the AOC-in-C of the command under whom he is serving who will decide whether dismissal, discharge or reduction is desirable in terms of Section 20 (3) of Air Force Act, 1950. Applicant's case was referred to the competent authority who after examining all aspects issued orders for his dismissal from service in exercise of powers under Section 20 (3) of the Air Force Act read with Rule 18 of Air Force Rules, 1969. He further submitted that after his marriage he submitted an application for change of nomination on 13.06.2015 nominating NOK as his mother and not his wife which shows his nasty intention with relation to his wife. He contended that applicant was dismissed from service on the grounds of his misconduct which led to his conviction by the Criminal Court and thereafter his dismissal from service. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Applicant Rajendar Singh, a Leading Aircraftsman of the Indian Air Force was serving with 2253 Air Force Sqn when her wife Bhawana Manral committed suicide by hanging on 10.08.2016. A

FIR No. 96 of 2016 was lodged at Police Station Mukhani, District-Nainital under Section 304B of IPC. Based on the FIR, Charge Sheet under Section 304B, 302, 498A and 3/4 of Dowry Prohibition Act, 1961 was filed against the applicant before 1st Sessions Judge, Haldwani, Nainital. After trial of the case, on 27.09.2019 the learned Sessions Judge delivered the judgment in which applicant and his parents were found guilty of the offences under Section 304B of IPC (Dowry Death), under Section 498A of IPC (cruelty) and under Section 3/4 of Dowry Prohibition Act, 1961 (taking and demanding dowry) and was awarded the following sentences which were to run concurrently:-

- (i) Rigorous Imprisonment of 07 years U/S 304B of IPC.
- (ii) Rigorous Imprisonment of 03 years U/S 498A of IPC.
- (iii) Rigorous Imprisonment of 05 years and 06 months U/S 3/4 of Dowry Prohibition Act.

7. He was lodged in jail w.e.f. 27.09.2019 and was enlarged on bail by the Hon'ble High Court of Uttarakhand, Nainital vide order dated 07.01.2020. Applicant is stated to have submitted an appeal dated Nil for quashing of his impugned dismissal order dated 09.01.2020 which seems to have not been decided as yet.

8. The competent authority was conveyed about applicant's conviction in terms of para 687 of Air Force Rules, 1969 for his

consideration. For convenience sake, aforesaid regulation is reproduced as under:-

"687. Conviction of officers and Airmen by the Civil power.

The conviction of an officer by the civil power will be reported to the Central Govt and that of Warrant Officer to Air Headquarters for such action as these authorities see fit to take. The conviction of NCO or Aircraftsman will be reported to AOC-in-C Command under whom he is serving who will decide whether dismissal, discharge or reduction is desirable."

9. After his conviction applicant's case was taken up with competent authority and vide order dated 09.01.2020 his dismissal order was passed to be dismissed from service w.e.f. 17.01.2020. For convenience sake, order dated 09.01.2020 is reproduced as under:-

"1. Whereas 947551 LAC R Manral was enrolled in the IAF on 30 March 2011 in the trade of Auto Tech and is held on the posted strength of 2253 Sqn C/O 40 Wing, Air Force w.e.f. 02 March 2015.

2. And whereas, FIR No 96/2016 was lodged at Police Station Mukhani, Nainital u/s 304B IPC by Shri Lal Singh Dharmwal (father-in-law of LAC Manral) on 10 Aug 16 against LAC Manral and other members of his family. Subsequently, charges were framed under Sections 304B, 302, 498A IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 against LAC Manral before the 1st Upper Session Judge, Haldwani, Distict Nainital.

3. And Whereas, Shri Arvind Kumar, HJS, 1st Upper Session Judge, Haldwani, District Nainital, has delivered judgment dated 27 Sep 19 and LAC Manral has been found guilty of commission of offences under Section 304B, 498A of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act, 1961. After hearing on the quantum of sentence the Hon'ble Court, on 27 Sep 19, has sentenced LAC R Manral to suffer Rigorous Imprisonment for seven years and also imposed fine upon

him for the commission of above offences. LAC R Manral is in civil custody since then.

4. And whereas, after due examination of the verdict dated 27 Sep 19, I am of the view that the acts committed by LAC R Manral are unbecoming of an airman belonging to a combatant force i.e. IAF. The acts of LAC R Manral, as established in the above said judgment dated 27 Sep 19, have brought disrepute to the IAF and are prejudicial to good order and Air Force discipline. I am also of the view that the conviction of LAC R Manral for such serious crimes renders his further retention in the IAF highly undesirable.

5. Now therefore, in exercise of the powers vested under Section 20 (3) of Air Force Act, 1950 read with Rule 18 (1) of the Air Force Rules, 1969, I order dismissal of 947551 LAC R Manral Auto Tech of 2253 Sqn C/o 40 Wg from the service. I further direct in terms of Rule 12 (1) of the Air Force Rules, 1969 that dismissal of LAC R Manral from the service shall take effect on 17 Jan 2020."

10. Based on aforesaid order from the competent authority, he was dismissed from service vide order dated 16.01.2020 and aforesaid dismissal letter was sent to Shri Bhupal Singh Manral, father of LAC Rajendra Singh at his home address as applicant was lodged in Jail. For convenience sake, order dated 16.01.2020 is reproduced as under:-

"1. Enclosed, please find the above mentioned Dismissal Order CAC/C 2706/13/Discp dated 09 Jan 20 in original issued by the Air Officer Commanding-in-Chief Central Air command Indian Air Force being the competent authority under Section 20 (3) of the Air Force Act, 1950 read with Rule 18 (1) of AF Rules, 1969 after having considered the entire facts and circumstances of the case in consequences of your son Rajendra Manral's conviction dated 27 Sep 19 and award of sentence of rigorous imprisonment dated 27 Sep 19 for seven years and also fine imposed upon him by Hon'ble Shri Arvind Kumar HJS, 1st Upper Sessions Judge, Haldwani after having found him

guilty of commission of offences under Section 304B IPC, Sec 498A IPC and Sec 3&4 of Dowry Prohibition Act.

2. LAC R Manral shall be dismissed from the service on 17 Jan 2020 in accordance with the direction of the AOC-in-C at Para 5 of the Speaking Order.

3. A copy of the Dismissal Order was delivered to LAC Manral at District Jail, Haldwani on 14 Jan 20 who in turn, requested that a copy of the said order may be forwarded at his home address."

11. In regard to applicant's contention that execution of the judgment and order dated 27.09.2019 has been stayed vide order dated 28.02.2020, therefore, he is eligible to be reinstated in service. The fact is that even if proceedings have been stayed, it does not take away the taint of conviction against the applicant as the verdict for conviction is still in operation even after granting of bail and staying of order dated 27.09.2019.

12. In the instant case applicant was provided full opportunity to defend himself at the Trial Court, thereafter the order was passed after considering all material evidence. Hence, his submission that the provisions of natural justice have not been complied with while passing the dismissal order, is false.

13. Applicant's contention, that he was not served a show cause notice prior to his dismissal, is not sustainable as Manual of Air Force Law (volume II) provides that 'a show cause notice will not be necessary when dismissal or removal is sought on grounds of conduct which has led to individual's conviction by criminal court and court martial'.

14. The applicant was convicted as per conviction verdict dated 27.09.2019. He was dismissed from the service on the grounds of misconduct which led to his conviction by a Criminal Court. Therefore, no illegality has been caused by issuing the dismissal order dated 09.01.2020. Further, the competent authority has clearly mentioned in its aforesaid order that 'the acts of LAC R Manral (applicant) as established in the above said judgment dated 27.09.2019 have brought disrepute to the IAF and are prejudicial to Good Order and Air Force Discipline. I am also of the view that the conviction of the applicant for such serious crimes renders his further retention in the IAF highly undesirable.'

15. Further, in regard to his contention that since the proceedings have been stayed, therefore, he should be reinstated in service, Hon'ble Apex Court in the case of **Deputy Director of Colligate Education (Admin) Madras vs S. Nagoor Meera**, AIR 1995 SC 1964, has held as under:-

"what is really relevant, thus, is the conduct of the government servant which led to the conviction of a criminal charges. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above if he succeeds in appeal or other proceedings the matter can always be reviewed in such a manner that he suffers no prejudice."

16. Additionally, the Hon'ble High Court of Judicature at Allahabad in W.A. No 27271 of 2018, **Mahendra Kumar vs Union of India & Ors**, has held as under:-

"I need not concern myself anymore with the power of the appellate court under the Cr PC for the reason that what is relevant for clause (a) of the second proviso to Article 311 (2) of the Constitution of India is that the conduct which led to his conviction on a criminal charge and there can be no question of suspending the conduct. I am, therefore, of the opinion that proceedings for passing order of dismissal, removal or reduction in rank of a government servant who has been convicted by a Criminal Court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant accused has been released on bail pending the appeal....".

17. In view of the above, we are of the considered opinion that due procedure was adopted for applicant's dismissal from service which needs no interference and O.A. is liable to be dismissed.

18. Accordingly, O.A. is **dismissed** on merit.

19. No order as to costs.

20. Miscellaneous applications pending, if any, shall stand disposed off.

(Vide Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15.11.2021

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