

Court No. 1**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 265 of 2014**Thursday, this the 20th day of April, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Abhishek Pandey (32475 - S, Ex – Fg Offr, Adm / FC), S/O Late Sri Chandeshwer Pandey, Permanent Resident of Khiriya Ghat, Hat Saraiya Road, P.O. : Bettiah, District: West Champaran - 845438 (BIHAR)

-----Applicant

Ld. Counsel for the Applicant: **Shri Lohitaksha Shukla, Advocate**

Versus

1. Union of India Ministry of Defence through its Secretary Central Secretariat, New Delhi - 110001.
2. The Chief of the Air Staff, Indian Air Force Air HQs (Vayu Bhavan) New Delhi – 110106.
3. Air Officer Commanding - in - chief, HQs Central Air Command, IAF, Bamraulli Allahabad.
4. Station Commander 505 SU, AF C/O 56 APO.
5. Commanding Officer Air Defence College C/o 505 SU, AF C/o 56 APO.
6. Station Commander 8 C & M U, Air Force Station Bakshi – Ka – Talab, Lucknow

7. Presiding Officer General Court Martial Assembled on 18.09.2013 and subsequent days at 8 C & M U, Air Force Station Bakshi - Ka - Talab to try 32475-S, FgOffr Abhishek Pandey, Adm / FC of ADC, AF.
8. Wg Cdr KK Singh (23627) Adm / FC C/o 56 DPO, Air HQs Vayu Bhawan, New Delhi – 110106
9. Wg Cdr Vikas Raghav (25377) Adm / FC C/o DPO, Air HQs Vayu Bhawan, New Delhi – 110106.
10. Fg Offr Surabhi Bhesania (32573) Adm / FC 501. S.U. Air Force, C/0 56 APO, Borhala (Punjab)

..... Respondents

Ld. Counsel for the Respondents : **Shri RC Shukla,
Central Govt Counsel.**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(I) That the Hon’ble Tribunal may graciously be pleased to allow the application of the applicant with exemplary cost quashing / setting - a - side the Impugned GCM proceedings including its Convening Order dated 9.9.2013, Findings and Sentence dated 28.10.2013 as well as Pre Confirmation Petition Rejection Order dated

17.1.2014 passed by Respondent No. 2 and Petition Under Section 161 (2) Air Force Act 1950 Rejection Order dated 5.9.2014 passed by Respondent No. 1 contained as ANNEXURE No's A-1, A-2 and A-3 to this Original Application.

- (II) That the Hon'ble Tribunal may also graciously be pleased to directed the Respondents to reinstate the Applicant in service forthwith and treat him regular in service right from 1.2.2014 with all Consequential benefits admissible to him including all the pay and Allowances as usual and as earlier.
- (III) Any other Relief which the Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case may also graciously be granted to the applicant.”

2. Briefly stated facts of the case are that applicant was enrolled in Air Force on 27.12.2005 as an airman and was later on commissioned as an officer on 30.06.2012. He was tried by a General Court Martial (GCM) for seven charges. 13 Prosecution Witnesses were examined. GCM found the applicant “Not Guilty” in four charges and guilty in three charges. Applicant was awarded punishment of dismissal from service. Applicant represented his case for setting aside his punishment of dismissal which was rejected. Being aggrieved, applicant has filed instant O.A. to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in Air Force on 27.12.2005 as an airman and later on he was commissioned as an officer on 30.06.2012. While undergoing training at Air Force Academy Hyderabad, his relationship developed with Flying Officer (Fg Offr) Surabhi Bhesania and they planned to marry each other after completion of their training. After training, the applicant and Fg Offr Surabhi Bhesania both were posted to Air Defence College, C/o 505 SU, Air Force for 146 FCC (Fighter Controller Course) and they were living in 505 SU, Air Force. In July/August Fg Offr Surabhi Bhesania came to know that real elder brother of the applicant was serving as Sergeant (Sgt) in Air Force. Some telephone calls and objectionable messages were received on her Mobile Phone -1 to which the applicant had objected and the same had rendered altercation between both of them on 15.08.2012 to which in 3rd week of September 2012 Wg Cdr Vikas Raghav and Wg Cdr KK Singh have twisted as slapping to her. Applicant shared his problem with LAC HS Dhaila 6 who was an Airman and the friend of applicant from his Airmanship Life disclosing him that he was having love affairs with one girl who is presently going to break up the friendship with him. LAC HS Dhaila requested the applicant for phone number of that girl which was provided to him by the applicant with an expectation to patch up the breaking relations of the applicant and Fg Offr Surabhi Bhesania. LAC HS Dhaila started

sending vulgar messages on telephone number of Fg Offr Surabhi Bhesania. When the applicant came to know about such mischievous conduct of LAC HS Dhaila, the applicant stopped talking to him. In second week of September 2012, Wg Cdr Vikas Raghav and Wg Cdr KK Singh entered in Officers Mess of 505 SU, Air Force and started abusing and assaulting the applicant. Thereafter, in the night of 25/26 September 2012 when the applicant was seriously ill, both the officers again entered in the room of the applicant and snatched away his laptop and mobile phone and placed him under arrest and Escort. The applicant did not submit complaint against these officers keeping in view completion of his course. A Court of enquiry was held vide order dated 24.09.2012 to enquire into the circumstances. After conducting Court of Inquiry, Summary of Evidence was recorded against the applicant and applicant was tried by GCM on 7 charges. Applicant submitted application for interview with respondent No 2 (The Chief of the Air Staff and Respondent No 3 (Air Officer Commanding in Chief) but the same was rejected. Applicant was not given opportunity to disclose all the correct facts. Applicant was not given opportunity to examining the witnesses, PW 1, PW 2 and PW 3, accordingly the principles of natural justice as well as provisions of Rule 156 (2) of the Air Force Rule 1969 were violated. He pleaded not guilty to the charges but he was held guilty on the basis of evidence and was

sentenced to be dismissed from service. The accused applicant was tried by GCM on following charges :-

(i) Committing a Civil Offence that is to say using criminal force to a person punishable under Section 352 of the Indian Penal Code, 1960

In that he

At Air Force Station Memaura on 15 August 2012 used criminal force to Fg Offr Surabhi Bhesania (32573) Adm/FC by slapping her on the face.

(ii) Committing a Civil Offence that is to say uttering abusive words to a woman intending to insult her modesty, punishable under Section 509 of the Indian Penal Code, 1860.

In that he

At air force Station Menaura on 15 Aug 2012 said, "Randi, Behenchod, Matherchod and Characterless" or words to that effect to Fg Offr Surabhi Bhesania thereby intending to insult her modesty.

III- An act prejudicial to good order and Air Force Discipline.

in that he

at Air Force Station Memaura on 15 Aug 12 improperly said "RANDI, BEHENCHOD, MADERCHOD AND CHARACTERLESS" or words to that effect to Fg. Offr. Surabhi Bhesania (32573) Adm/FC.

IV- Behaving in a manner unbecoming of the position and the character of a commissioned officer.

in that he

at Air Force Station Memaura on 15 Aug 12 uploaded mobile number 8756306968 of Fg. Offr. Surabhi Bhesania (32573) Adm/FC an officer subject to Air Force Act 1950, in the name of SONIKA on the internet website www.topix.com for call girls.

V- An Act prejudicial to good order and Air Force Discipline.

in that he

at Air Force Station Memaura on 15 Aug 12 improperly uploaded mobile number 8756306968 of Fg. Offr. Surabhi Bhesania (32573) Adm/FC an Officer subject to Air Force Act 1950, in the name of SONIKA on the internet website www.topix.com for Call girls.

VI- Committing a civil offence punishable under Section 109 read with Section 509 of The Indian Penal Code 1860, that is to say abetting commission of an offence under Section 509 of the Indian Penal Code 1860 consequent to which the offence was committed.

in that he

at Air Force Station Memaura during first and second week of Sep 12, intending to outrage the modesty of Fg. Offr. Surabhi Bhesania (32573) Adm/FC Instigated 932165-R LAC H.S. Dhaila Str Fir of NTS c/o AF Stn Begumpet to send vulgar SMS textmessages on mobile number 8756306968 and 8765785237 belonging to Fg. Offr. Surabhi Bhesania By informing him that the said mobile numbers belong to Miss Anuradha, so that the said text messages will be seen by Fg. Offr. Surabhi Bhesani a consequent to which between 17 Sep 12 to 26 Sep 12, LAC H.S. Dhaila sent the following vulgar SMS textMessages to her mobile numbers 8756306968 and 8765785237 from his mobile number 8008455018.

VII- An Act prejudicial to good order and Air Force Discipline.

in that he

at Air Force Station Memaura on 15 Aug 12 improperly said, "Agar Aaj Nahi Ayegi To Kya Kabhi Bahar Nahi Ayegi, Mein Tujha Tab Dekh Loonga" or words to that effect, to Fg. Offr. Surabhi Bhesania (32573) Adm/FC.

4. In the said GCM, 13 Prosecution Witnesses (PW) were examined. The applicant was also examined as Defence Witness.

Details of Witnesses are as under:-

(i)	Fg Offr Surabhi Bhesania -	PW-1
(ii)	Fg Offr Davinder Kaur-	PW-2
(iii)	Fg Offr A Newmen	PW-3
(iv)	Fg Offr Monika Bashisht	PW 4
(v)	JWO AK Das IAF (Police)	PW-5
(vi)	LAC HS Dhaila	PW-6
(vii)	Wg Cdr Abishek Govil	PW-7
(viii)	Sqn Ldr SK Sunagar	PW-8
(ix)	Wg Cdr Vikas Raghav	PW-9
(x)	Wg Cdr KK Singh	PW-10
(xi)	Fg Offr Karn Singh	PW-11
(xii)	Wg Cdr Rajesh Chembath	PW-12
(xiii)	Fg Offr Shreyansh Upadhyay	PW- 13.

Fg Offr Abhishek Pandey was examined as - Defence Witness- 1.

Flt Lt Priyank Pandey was examined under Section 143 of Air Force Act 1950.

5. Finding the evidence to be sufficient, applicant was found guilty of three charges i.e. (i), (ii) and (vi) charge under Section 71 of the Air Force Act, 1950 and found "Not Guilty" on charges (iii) under Section 65, (iv) under Section 45, (v) under Section 65 and (vii) under Section 65 of the Air Force Act 1950 vide impugned findings dated 28.10.2013 and applicant was sentenced with dismissal from service which was confirmed by Respondent No 2. LAC HS Dhaila was sending vulgar messages to Fg Offr Surabhi Bhesania. When applicant came to know about this fact he advised LAC HS Dhaila not to do so. LAC HS Dhaila was also tried by District Court Martial and sentenced to undergo detention for two months and to be dismissed from service. His punishment of **'To be dismissed from service'** was commuted **"To forfeit 2 years of service for the purpose of increased pay and pension"** by the competent authority.

6. Learned counsel for the applicant has raised some legal questions in support of his arguments that the proceedings of GCM are void for mandatory provision of Army Rule 22(1) being not followed. The submission of the learned counsel is that under rule

22(1) it is necessary to record the statements of the prosecution witnesses in writing. There was no abusing or slapping or threatening between applicant and Fg Offr Surabhi Bhesania on 15.08.2012 as alleged. The applicant had apologized and matter was settled in writing.

7. On 26.09.2012 Fg Offr Surabhi Bhesania made a written complaint to the Commanding Officer and a Court of Inquiry was ordered. Applicant replied that he never abused to Fg Offr Surabhi Bhesania. He was told by Wg Cdr KK Singh that if he gives confessional statement as narrated by him, everything will be sorted out. The applicant accordingly gave the narrated confessional statement as told by Wg Cdr KK Singh. Wg Cdr KK Singh himself recorded confessional statement. This confessional statement is bereft of any truth and in violation of all legal norms and procedures as mandated vide AFO 03/2010. Provisions of Indian Evidence Act 1872 and Hon'ble Supreme Court orders. The applicant gave various confessional statements to Sqn Ldr Gunashekhar a Liaison Unit Officer and Wg Cdr JK Pandey and in Court of Inquiry on 26, 27 and 29.09.2012 as directed by Wg Cdr KK Singh under threat to save his career since he was the Senior Instructor and the Senior Officer for him. The applicant was made victim of bargaining. The applicant was beaten by Wg Cdr KK Singh and Wg Cdr Vikas Raghav in the night of 25/26.09.2012. All the confessional statements were

obtained by using third degree methods on the applicant and by illegal means and methods. Wg Cdr KK Singh stated that **“Mein Group Captain banu ya no banu per ye jayega, nanga he jayega”** which is recorded in CD (Exhibit BA). Learned counsel for the applicant stated that the Hon’ble Supreme Court in the case of ***Ziyauddin Burhanuddin Bukhari Vs Brijmohan Ramdas Mehta***, AIR 1975 SC 1788 has ruled **“There could be no more direct better evidence of it than the tape recorded conversation”**. The GCM has erred completely ignoring the CD recorded conversation of various Prosecuting Witnesses fabricating the case, cultivating the witnesses and evidences by the prosecution for fixing the applicant. The voices were acknowledged as their own by Wg Cdr KK Singh, Wg Cdr Vikas Raghav and Fg Offr Devinder Kaur who hatched the plan of fixing the applicant before the GCM when the CD recording was played before GCM. The applicant was kept under custody of Escorts for 03 days from 25/26 night to 28.09.2012 and he was not allowed to meet any one till he deposed before Court of Inquiry.

8. Learned counsel for the applicant stated that GCM has erred in not taking into account all evidences brought before it. GCM findings rely upon the one sided untenable statements of PW-1, PW-2, PW-3 and illegal confessional statement taken from the applicant (Exhibit – AH) in support of First Charge against the applicant. In fact, in utter violation of Rule 156 (2) of the Air Force

Rule 1969, PW-1, PW-2 and PW-3 were examined before court of Inquiry in the back of the applicant which they kept supporting such tutored and illegal statements even before GCM and therefore, the proceedings of the Court of Inquiry on the complaint of PW-1 are totally vitiated and accordingly, the GCM has been assembled on the basis of absolutely illegal proceedings.

9. PW-1 statement on threatening was made on oath before the GCM and it was 7th charge against the Applicant. The threatening statement which was made based of 1st, charge and 2nd charge against the applicant, fell short of truth and the applicant was found "NOT GUILTY". Roommate of PW-1 in her Summary of Evidence, statement on page 14 and 15 and before the GCM deposed regarding PW-1 relations. "They have relationship of Boy friend and Girl Friend and they had committed relationship. Fg Offr Surabhi Bhesania (PW-1) produced various love letters written by her, hundreds of love messages sent by her on applicant's mobile form part of GCM proceedings. Fg Offr Surabhi Bhesania spoke a blatant lie before GCM denying everything which is on record. The prosecution cross examined applicant (DW-1) for over 3 days but nothing contrary emerged except the truth that the applicant did not slap, threatened or abused Fg Offr Surabhi Bhesania on 15.08.2012. It was merely a friendly altercation between the applicant (DW-1) and Fg Offr Surabhi Bhesania (PW-1) on 15.08.2012 which was

upgraded and fabricated to slapping and abusing etc. GCM has erred in not taking into account the unscathed deposition of the applicant (DW-1) and contents of CD recorded (exhibit BA) evidence in corroboration of his statement which bares the facts that the applicant is innocent. The GCM has erred in finding the applicant guilty on 6th charge and ordering dismissal of the applicant on the basis of prosecution's fabricated case and evidences which are entirely wrong. Confession was not made voluntarily, it was made out on promise of Wg Cdr KK Singh (PW-10).

10. The second charge on which the applicant was found guilty by the GCM stating that he on 15.08.2012 while at Air Force Station Memoura intending to outrage the modesty of Fg Offr Surabhi Bhesania said her, Randi Bhenchod, Matherchod and characterless or words to that effect. Fg Offr Surabhi Bhesania reported that she is getting vulgar SMS from mobile No. 800845018 and sex calls from so many numbers on her mobile and she suspects Fg Offr Abhishek Pandey. Matter was investigated. Applicant informed Wg Cdr Vikas Raghav PW-9 and Wg Cdr KK Singh, PW-10 that LAC HS Dhaila has done this. Applicant also revealed that since LAC HS Dhaila was his close friend, he revealed about his break up with Fgt Offr Surabhi Bhesania on 15.08.2012. Wg Cdr Vikas Raghav PW-9 and Wg Cdr KK Singh PW-10 searched his room, seized and confiscated his mobiles, laptop, various letters of Fg Offr Surabhi Bhesania and

made a list and took it away vide Exhibit Z. Applicant was put under custody of escorts for 26, 27 and 28.09.2012. Later nothing offensive was found on the mobiles or laptop of the applicant by prosecution for evidence.

11. The Sixth charge avers that the applicant Fg Offr Abhishek Pandey at Air Force Station Memoura during first and second week of Sep 2012, intending to outrage the modesty of Fg Offr Surabhi Bhesania instigated LAC HS Dhaila to send vulgar SMS text message on mobile numbers 8756306968 and 9765785237 belonging to Fg Offr Surabhi Bhesania. The loose CD at Exhibit T was unauthenticated, uncertified, not sealed by any authority or producer of the contents on the CD recording. It is an inadmissible electronic record for evidence in court as mandated vide Sections 65, 65A, 65B of Indian Evidence Act 1872 and provisions of IT Act 2000. LAC HS Dhaila admitted that he has sent all the vulgar message (SMSs) to Fg Offr Surabhi Bhesania between 15.09.2012 to 26.09.2012 till he was caught by JWO AK Das, IAF (Police). The applicant's mobile phone device an exhibit of the court proceedings does not contain any evidence of sending vulgar message whereas various vulgar messages which were sent by LAC HS Dhaila are existing in his sent box as seen by the Court. The applicant has stated that when he came to know of misdeed of LAC HS Dhaila on 23/24.09.2012, he could not believe it and on 24.09.2012 he rebuked

LAC HS Dhaila and broke his friendship with him. On 25.09.2012 Fg Offr Surabhi Bhesania asked LAC HS Dhaila “ tell me the name of person on whose instruction you were sending these SMSs, LAC HS Dhaila replied that these SMSs were sent to her by mistake. He said “I was not sending these SMS on any one’s instruction”. LAC HS Dhaila vide page 44, 45 of GCM proceedings stated it all. The same has been corroborated by Fg Offr Surabhi Bhesania vide her statement at page 85 of GCM Proceedings. LAC HS Dhaila was caught red handed sending vulgar SMS by JWO AK Dash, IAF (Police) and he confessed having committed the crime. Now to save himself from consequences of the crime, he involved the applicant and told that Fg Offr Abhishek Pandey instigated him to do so. LAC HS Dhaila has disclosed that he is interested in women. Learned counsel for the applicant pleaded that findings of the GCM suffer from arbitrariness, illegality and perversity and are liable to be set aside in the interest of justice.

12. On the other hand, learned counsel for the respondents submitted that applicant was initially enrolled in the Indian Air Force (IAF) on 27.12.2005 as an airman and was later on commissioned in the IAF in Adm/FC Branch on 30.06.2012. He was on the posted strength of Air Defence College and attached to 8 Care and Maintenance Unit (C&MU) at Lucknow for disciplinary proceedings. Applicant was tried by GCM which was assembled at 8 C&SU, Air

Force between 18.09.2013 to 28.10.2013 on total seven charges. All the evidences were laid before the Court and the Court satisfied itself as provided by Rules 49 and 50 of Air Force Rules, 1969. All formalities required under the Air Force Act 1950 and Air Force Rules 1969 were strictly observed. Applicant pleaded 'Not Guilty' to all seven charges before the GCM. Applicant was defended by counsel Wing Cdr (Retd) GR Choubey, Advocate Shri TN Tiwari and Wg Cdr H Singh Adm/ATC of 8 C&SM, AF, as friend of applicant. Pre-confirmation petition dated 22.11.2013 was submitted by the applicant under Section 161 (1) Air Force Act 1950 against the finding and sentence of the GCM which was duly considered and confirmed by the Chief of the Air Staff on 17.01.2014. Accordingly, the findings and sentences awarded by the GCM were promulgated to the applicant in accordance with para 766 and 768 of Regulations for the Air Force, 1964 and Rule 78 of the Air Force Rules, 1969 on 03.02.2014. The contents of para 125 to 128 and para 124 of Air Force Order 03/2008 were duly explained to the applicant. Aggrieved by the confirmation of findings and sentences of GCM, the applicant had also preferred the post confirmation petition dated 03.03.2014, under Section 161 (2) AF Act, 1950 to the Defence Secretary. The competent authority was satisfied that the GCM was conducted in a proper manner. The applicant had not brought out anything in his said petition that could have merited any interference with the

confirmed finding and sentence of the GCM. The sentences awarded to the applicant were legal and in accordance with the provisions of Section 73 of the Air Force Act, 1950. Petition of the applicant was rejected by competent authority in Ministry of Defence vide Order dated 05.09.2014. The GCM found him "Guilty" in (i), (ii) and (vi) charges but found "Not Guilty" on the rest of the charges. Accordingly, the applicant was sentenced "to be dismissed from the service".

13. Learned counsel for the respondents further pleaded that instant case ought to be adjudicated as an appeal in terms of Section 15 (2) of the Armed Forces Tribunal Act, 2007 and not under Section 14. Section 15 (2) provides that "Any person aggrieved by any order, decision, finding or sentence passed by a Court Martial may prefer an Appeal in such form, manner and within such time as may be prescribed". As such applicant has no legal right to challenge the GCM proceedings under Section 14. The applicant indulged himself in serious misconduct. The woman officer (PW-1) had not even completed one year of Commissioned Service in the IAF at the time of experiencing such a serious jolt from the misconduct of applicant. In the case of **Major Chandra Kumar Ghopra Vs Union of India and Others**, the Hon'ble Apex Court has held that 'Irreproachable conduct, restrained attitude, understanding of responsibility and adherence of discipline in an apple pie order is

expected from an officer of the Armed Forces". The evidence on record in the instant case in proof of the proven charges luminously project that the said aspects were altogether discharged by the applicant. The charges on which the applicant was found guilty by GCM have been proved beyond reasonable doubt and the applicant has not brought out anything in his instant petition which merits interference with the confirmed finding and sentence of the GCM. The sentence awarded to the applicant was in accordance with the provisions of Section 73 of the AF Act, 1950 and legally justified. Even if it is assumed that applicant intended to marry Fg Offr Surabhi Bhesania, then also the same does not give right to the applicant to use criminal force and abusive language against Fg Offr Surabhi Bhesania PW-1. The applicant was subject to Air Force Act, 1950, a special law to regulate the conduct of Air Force personnel. The applicant being a commissioned officer of Armed Forces was required to maintain a high degree of discipline. Indian Air Force was bound to maintain the dignity and decorum of lady officer, hence applicant was tried by GCM for his misconduct. Applicant used to stop Fg Offr Surabhi from speaking to her parents and male candidates and he used vulgars language and abused her. On 15.08.2012 applicant abused her and slapped her on her face. Listening the commotion, other course mates of Fg Offr Surabhi Bhesania also came there. The applicant was continuously shouting

and abusing her. Flying Officer Karan Singh, the Course Senior called up the Course in Charge Wing Commander Vikas Raghav (PW-9). Applicant accepted his mistake and agreed that he had used abusive language and slapped her. He felt sorry for the behaviour and said that he will not repeat it again. Since the applicant apologized to Fg Offr Surabhi Bhesania and the Course in Charge in front of everyone present there, she decided not to take up the matter officially and gave him a chance but only on the condition that he would not try to talk to her or approach her by any means. The matter was informed to Senior Wing Commander KK Singh (PW-10) who called them and counselled both of them and written in the counselling register that the applicant had used criminal force to Fg Offr Surabhi Bhesania by slapping her on her face. The applicant many times called her up on her mobile but she did not pick up the phone and reported the matter to Course in Charge. The applicant stopped sending SMS and calling on phone. On 15.09.2012 at about 2330h, Fg Offr Surabhi Bhesania started getting STD calls on her mobile from unknown numbers ensuring about some SONIKA. She picked up 2-3 calls and told that it was wrong number and not of SONIKA. She also started getting SMS like "Hi sonika can we be friends". She kept getting calls from different numbers and different persons throughout the day on 16.09.2012. She ignored most of the calls and attended a few and told that she was not Sonika. Fg Offr

Surabhi Bhesania called up her father and informed him about the incident. Her father spoke all numbers from which she received the calls. It was revealed at about 1930 hrs that there was post on the internet website www.topix.com which was related to her mobile number and the name written was Sonika. The post had one or two vulgar remarks written that "Anybody who is interested in sex can call me on 08756306968. Father of Fg Offr Surabhi Bhesania advised her to take out the said SIM card and use her BSNL SIM Card Number 8765785237. Next day on 17.09.2012, she started getting vulgar SMS on her this number too. She suspected that SMSs were being sent by somebody who was constantly monitoring her movements and her schedule. On 21.09.2012, Fg Offr Surabhi Bhesania reported the matter to Wg Cdr Vikas Raghav and Wg Cdr KK Singh as they were her instructors and Directing Staff at ADC. Fg Offr Surabhi Bhesania told PW-9 and PW-10 that she suspected the applicant was one who was sending the vulgar SMSs and had put her mobile number on porn website. When the applicant was asked about it by PW 9 and PW 10, he denied and offered his mobile for checking. On investigation it was revealed that SMS were coming on the mobile of Fg Offr Surabhi Bhesania (PW-1) saved in both the mobiles of the applicant in the name of Dhaila. Applicant (DW-1) informed Wing Commander KK Singh that Dhaila was his friend and he was working as a salesman in GOOGLE at Hyderabad. Applicant

(DW-1) accepted and told that he had told LAC HS Dhaila to send vulgar SMSs to Fg Offr Surabhi since she was not speaking to him and he was frustrated due to this. On being asked about uploading the mobile number of Fg Offr Surabhi on porn website the applicant said that he uploaded the same using his mobile and accepted that he had committed a mistake. The matter was reported to Commanding Officer. He also admitted that he had told LAC HS Dhaila to send vulgar messages to Fg Offr Surabhi Bhesania. The applicant was not placed under close arrest or assaulted as falsely stated by him. His proved acts are indicative of his rash, brazen, needlessly aggressive and outrageous attitude.

14. Fg Offr Surabhi Bhesania had submitted a complaint dated 26.09.2012 to her Commanding Officer against the applicant that he was abusing her using words such as "Behanchod, Madharchod, Randi etc making physical gestures and that she was getting vulgar SMSs from different unknown numbers and that she suspected the applicant behind all this harassment. A Court of Inquiry was ordered. Principles of natural justice were followed by the Court of Inquiry. The applicant was afforded full opportunities to defend his case. The applicant was blamed for insulting the modesty of Fg Offr Surabhi Bhesania (PW-1) by making sexually coloured remarks and using abusive languages to her, using threatening language to her. Summary of evidence and additional Summary of Evidence were

recorded in the case. The Commanding Officer of the applicant having considered the evidence on record of the proceedings had forwarded the case to Air Officer Commanding in Chief, CAC IAF recommending trial of the applicant by a Court Martial. The applicant was tried by GCM on 06.08.2013. In the meantime applicant submitted applications alleging conspiracy against him by the officers at ADC and requested to investigate the matter. The applicant had made a confessional statement dated 27.09.2012 in presence of two independent witnesses. In the said confessional statement the applicant had accepted that he had used criminal force to Fg Offr Surabhi Bhesania, used threatening and abusive language to her and instigated HS Dhaila to send vulgar messages to her and that he had posted the mobile number of Fg Offr Surabhi Bhesania on the porn website on the internet in the name of Sonika. There was no evidence on record to substantiate the allegation of the applicant and to show that there was any conspiracy by the witnesses against him. The applicant was given opportunity to bring forth his defence in GCM, therefore, the request of the applicant for investigation in the conspiracy against him by the witnesses was rejected. On the demand of the applicant, Wing Commander H Singh was detailed to assist the applicant as 'Friend of the Accused' during his trial by the GCM. The applicant requested to assemble the GCM at place other than Air Force Station Mamaura. The said request

was accepted to and the trial by the GCM was held at Air Force Station Bakshi Ka Talab, Lucknow. No prejudice was caused to the applicant thereby and the allegations of conspiracy are false and fabricated. Learned counsel for the respondents pleaded that there is no sufficient ground to stay the proceedings of the GCM or to refer the matter to Central Bureau of Investigation for proper and fair investigation. The applicant made voluntary confessional statement on 27.09.2012 before the recording Officer Wg Cdr KK Singh in presence of two independent officers namely Wg Cdr Rajesh Chembath and Fg Offr Shreyansh Upadhyan. The witnesses have also stated that the applicant had made the said statement voluntarily and without any inducement and coercion. The confession was video recorded and the witnesses having heard and seen the video recorded in the Court have testified that the contents of the said recording are the same as were recorded on the day of recording the confession of the applicant. The applicant through his defence counsel had cross examined the said witnesses at length and they have stood the test of the veracity of their statement. Thus, it is clear from the proceedings that the contention of the applicant that he was forced to give confessional statement by Wg Cdr KK Singh is not sustainable. There is no evidence to support the contention of the applicant that he was tortured for the confession. The confession was made by him of his own free volition admitting

his acts of misconduct of using criminal force to Fg Offr Surabhi Bhesania (PW-1). The applicant kept calling LAC HS Dhaila almost every day and kept insisting for sending vulgar SMSs. In cross examination LAC HS Dhaila had stated that he had sent the vulgar SMSs on insistence of the applicant as he was his friend and that the girl was of immoral character. The applicant used criminal force to Fg Offr Surabhi Bhesania by slapping her on the face and the matter was reported to Senior Instructor Wg Cdr KK Singh and the course in charge Wg Cdr Vikas Raghav and other eye witnesses. The two instructors visited the place of incident immediately wherein the applicant had admitted in front of all other course officers who were present at the scene of the incident that he had slapped Fg Offr Surabhi Bhesania. He felt sorry for his behaviour and said that he will not repeat it again. Since the applicant apologized to her and the Course in charge in front of everyone present there, Fg Offr Subabhi Bhesania decided not to take up the matter officially and gave him a chance only on the condition that he would not try to talk to her or approach her by any means. The applicant started commenting on character of Fg Offr Surabhi Bhesania, whenever they used to cross each other during commuting to and fro to the class room. When the applicant saw that Fg Offr Surabhi Bhesania was not reacting to his comments he started sitting in front of Fg Offr Surabhi Bhesania in the dinning hall and used to tell others 'Hum Darne Walon me se

nahi hain'. All this took ugly turn on 15.09.2012, when Fg Offr Surabhi Bhesania started getting STD calls on her mobile from unknown numbers enquiring about some Sonika. During trial, the court after taking due cognizance of the contents of CD (Exhibit 'BA') had sought clarifications from the witnesses with regard to their conversations in the CD. It was not revealed during the conversation between the witnesses that he (the applicant) was implicated in a false case by these witnesses. Besides the confessional statement of the applicant (Exhibit 'AH'), there is enough independent evidence available on record which proves the charges beyond reasonable doubt. Conspiracy and torturing of witnesses to frame the applicant under inducement, threat or promise are not supported by evidence on record of the proceedings. Fg Offr Surabhi Bhesania revealed that her number was uploaded on the porn website. It was revealed that the applicant had visited the website www.topix.com at 0110h, 0114h, 0115h on 16.09.2012 from his laptop. A print out of the web history of the said laptop was taken and the same is on record of Court of Inquiry and GCM proceedings as Exhibit 'Q'. During GCM Wg Cdr Abhishek Govil (PW-7) had liaised with Mr. Gupta SI Cyber Crime Cell, Lucknow to get the information relating to the mobiles (8765785231 and 9973889293 used by the applicant and the mobiles used by Fg Offr Surabhi Bhesania. The Cyber crime cell Lucknow had sent a CD containing the required information relating

to the said mobile numbers. The said CD was sealed and signed by Sqn Ldr Shukla the Officer Recording the Summary of Evidence. The print out of the contents of the CD were taken and the same are on record of GCM proceedings as Exhibit U-1 to Exhibit U-6. The said exhibits contained the call records of the mobile phones used by the applicant, LAC HS Dhaila and Fg Offr Surabhi Bhesania. The GCM found applicant "Not Guilty" of 3rd, 4th, 5th and 7th charge and found "Guilty" of 1st, 2nd and 6th charge and recorded brief reasons in support of its finding and applicant was sentenced "To be Dismissed from the service". Learned counsel for the respondents pleaded that instant Original Application is untenable in the eyes of law and the applicant is not entitled to reliefs prayed in the Original Applicant, which deserves to be dismissed.

15. We have heard learned counsel of both the parties and perused the documents available on record.

16. The contention of the applicant that proper procedure was not followed by the GCM while awarding punishment of dismissal from service is not agreed. The applicant will have to show that his defence has been prejudiced by lapses in following the procedure, only then he can get the benefit. On this point, we have already quoted the judgment of a Coordinate Bench of the Tribunal. Apart

from it, in the case of **Major G.S. Sodhi (supra)**, Hon'ble Supreme Court has observed in para 21 as under :

“It must be noted that the procedure is meant to further the ends of justice and not to frustrate the same. It is not each and every kind of defect preceding the trial that can affect the trial as such.”

17. The aforesaid view expressed by the Hon'ble Supreme Court has been followed by the Hon'ble Apex Court in the case of **Union of India &ors vs. Major A. Hussain** [1998] (1) SCC 537], wherein the Hon'ble Apex Court has observed as under :

“In G.S. Sodhi's case this Court with reference to Rules 22 to 25 said that procedural defects, less those were vital and substantial, would not affect the trial. The Court, in the case before it, said that the accused had duly participated in the proceedings regarding recording of summary of evidence and that there was no flagrant violation of any procedure or provision causing prejudice to the accused.”

18. Hon'ble Supreme Court in the case of **Major A.Hussain (supra)** has also observed as under :

“ When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court martial unless it is shown that accused has been prejudiced or a mandatory provisions has been violated. One may usefully refer to Rule 149 quoted above.”

19. In the instant case, applicant was tried by GCM for 7 charges. Applicant was defended by Wing Commander (Retd) GR Choubey, Advocate Supreme Court and Shri TN Tiwari, Advocate, Allahabad High Court Lucknow Bench and assisted by Wg Cdr H Singh as

friend of the applicant. The sweet relation of applicant with Fg Offr Surabhi Bhesania does not give right to the applicant to use criminal force and abusive language against lady officer. The applicant being a commissioned officer was subject to Air Force Act, 1950 and he was required to maintain a high degree of discipline. On 15.08.2012, applicant asked Fg Offr Surabhi Bhesania to open the door of her room. When Fg Offr Surabhi Bhesania did not open the door, applicant started using abusive language to Fg Offr Surabhi Bhesania. At that time Fg Offr Davinder Kaur, roommate of Fg Offr Surabhi Bhesania was also in the room. After opening the door applicant entered in the room and slapped Fg Offr Surabhi Bhesania on her face. Fg Offr Davinder Kaur tried to push him out of the door. She had seen and heard entire occurrence herself and she has stated that the applicant was aggressive. Listening the noise, other course mates of Fg Offr Surabhi Bhesania also came there. The applicant was continuously shouting and abusing her. Wing Commander KK Singh called and counselled both of them in counselling register. LAC HS Dhaila in his statement has conceded that he sent vulgar SMSs to Fg Offr Surabhi Bhesania on the request of Fg Offr Abhishek Pandey. Applicant also accepted that he uploaded the mobile number of Fg Offr Surabhi Bhesania on porn website. On cross examination, it was established that applicant

slapped and used abusive language against Fg Offr Surabhi Bhesania.

20. Statement of applicant that he gave confessional statement in pressure of Wing Commander KK Singh is not accepted. The Court of Inquiry and the documentary evidence produced by the witnesses had apportioned blame the applicant for insulting the modesty of Fg Offr Surabhi Bhesania by making sexual remarks, using abusive and threatening language, using criminal force by slapping and insulting her by uploading her mobile number 8756306968 in the name of Sonika on a porn website which has forum for call girls and agents. The allegation of the applicant that he was awarded punishment of dismissal by conspiracy is not agreed to as he was given full opportunity to bring forth his defence. Request of the applicant to assemble the GCM at place other than Air Force Station Mamaura was accepted by the competent authority and GCM was held at Air Force Station Bakshi Ka Talab, Lucknow. No prejudice was caused to the applicant and allegations of conspiracy are false and fabricated.

21. The allegation of the applicant that he made confessional statement in the pressure of Wing Commander KK Singh is also not agreed to. The applicant had voluntarily made a confessional statement on 27.09.2012 before the Recording Officer Wing

Commander KK Singh in presence of two independent officers namely, Wing Commander Rajesh Chembath (PW-12) and Flying Officer Shreyansh Upadhyay (PW-13). Both officers, in their statements before the GCM have stated that on 27.09.2012 the confessional statement of the applicant was recorded by Wing Commander KK Singh in their presence and at the time of recording of said confession, there was no other person available in the room except the applicant, the Officer Recording the statement and the Independent Officers. Both independent officers have stated that the applicant had made confessional statement voluntarily and without any inducement, coercion or promise and there was no police present in or around the room where the confession was being recorded. The confession was video recorded and the witnesses having heard and seen the video recorded in the Court have testified that the contents of the said recordings were the same as were recorded on the day of recording the confession of the applicant. The applicant through his Defence Counsel had cross examined the said witnesses at length and they have stood the test of the veracity of their statement. There is no evidence to support the contention of the applicant that he was tortured or compelled for the confession. The confession was made by the applicant on his free volition admitting his acts of misconduct of using criminal force against Fg Offr Surabhi Bhesania. LAC HS Dhaila had stated before the Court

on 02 and 03 September 2012 that he received mobile calls from the applicant asking him to buy new SIM card and to send vulgar SMSs to a girl namely Anuradha as she was blacking the applicant. The applicant told mobile Number of the said girl which LAC HS Dhaila saved in his mobile. The applicant kept calling LAC HS Dhaila almost every day and kept insisting for sending vulgar SMSs to the girl named by him as Anuradha. The applicant narrated the vulgar SMSs on mobile which LAC HS Dhaila typed and sent to Anuradha. The applicant told LAC HS Dhaila not to pick up any call from the mobile of Anuradha. Thereafter for the next three days he had received many calls from the applicant wherein he had narrated the vulgar SMSs to him and he had sent the same to Anuradha on the number given by the applicant. The applicant had a doubt whether LAC HS Dhaila was actually sending the SMSs or not therefore, he asked LAC HS Dhaila to send a copy of the SMSs to him as well. On 26.09.2012, LAC HS Dhaila was caught by police. In his statement LAC HS Dhaila has stated that the number which the applicant had given to him and on which he had the vulgar SMSs was 8008455018 and the mobile number of the applicant was 87656785231. LAC HS Dhaila in cross examination has stated that he had sent the vulgar SMSs on insistence of the applicant as he was his friend and the girl was of immoral character and she was troubling the applicant. The contents of the subject mobile were

perused by the Court in presence of the applicant and LAC HS Dhaila wherein LAC HS Dhaila had identified the mobile and admitted the content of the SMSs being the same as were sent by him to Anuradha on insistence of the applicant on the mobile number given by the applicant. Subsequently, the applicant has also admitted in his confession that he had told LAC HS Dhaila to send vulgar messages to Fg Offr Surabhi Bhesania. The applicant has admitted having friendship with LAC HS Dhaila and had passed on mobile Number of Fg Offr Surabhi Bhesania to harass her. The applicant was the mastermind of the episode and further to cover up his misdeeds was blaming LAC HS Dhaila. LAC HS Dhaila was also tried by District Court Martial and sentenced to undergo detention for two months and to be dismissed from the service for having sent vulgar messages to Fg Offr Surabhi Bhesania. The said punishment was later commuted by the competent authority. As LAC HS Dhaila was co-accused, his punishment "To be dismissed from service" was commuted "To forfeit two years of service for the purpose of increased pay and pension" by the competent authority.

22. We further take a note that while rejecting applicant's appeal dated 22.11.2013, the Chief of Air Staff vide order dated 17.01.2014 has considered all the points raised by the applicant. The evidence led by the prosecution, is fully proved and there is sufficient evidence in support of the charge with regard to misbehaving with lady officer

PW-1. Pre-confirmation petition dated 22.11.2013 submitted by the applicant under Section 161 (1) of Air Force Act 1950 against the finding and sentence of the GCM was confirmed by the Chief of Air Staff on 17.01.2014. The contents of para 124, Para 125 and 128 of Air Force Order 03/2008 were explained to the applicant. Applicant preferred post confirmation petition dated 03.03.2014 which was examined by the Central Government and after considering the entire material on record, the competent authority was satisfied that the GCM was conducted in a fair and proper manner. The charges on which the applicant has been found guilty by the GCM have been proved beyond reasonable doubt. The sentence awarded to the applicant is legal and in accordance with provisions of Section 73 of the Air Force Act, 1950. The proved Acts of the applicant are indicative of his rash, needlessly aggressive and outrageous attitude in life. The proceedings of the GCM are in order and finding of the Court is fully supported by the legally tenable evidence on record. The proved misconduct of the applicant reveals that his integrity is not beyond reproach and he has not imbibed service norms and ethos despite about eight years of service in the Indian Air Force. The Hon'ble Apex Court in the case of **Major Chandra Kumar Chopra Vs. UOI & Ors**, while deliberating over the qualities expected from a service officer had held that '**Irreproachable conduct, restrained attitude, understanding of responsibility**

and adherence to discipline in an apple pie order is expected from an officer of the Armed Forces.” The evidence on record in the instant case in proof of the charges luminously project that the said aspects were altogether discarded by the petitioner. Thus, the argument of the learned counsel for the applicant that the procedure was not strictly complied with is wrong.

23. We do not find any procedural illegality or irregularity in conducting the GCM and findings recorded on the basis of the evidence are also in accordance with the rules. The case laws relied upon by the applicant are based on different facts and of no help to the applicant. The applicant has not brought out anything in the instant application which merits interference with the confirmed finding and sentence of the GCM. The punishment awarded to the applicant is as per recommendation of Court taking into consideration gravity of offence which was approved by the competent authority, therefore, there seems no arbitrariness and illegality in awarding punishment of dismissal from service to the applicant.

24. In view of the aforesaid discussions, we do not find any irregularity or illegality neither in conduct of GCM nor in award of punishment of dismissal from service to the applicant. Since, the applicant was dismissed from service as per Air Force Rules on the

subject, there is no violation of the principle of natural justice. Accordingly, this O.A. lacks merit, deserves to be dismissed and is hereby **dismissed**.

25. No order as to costs.

26. Pending application (s), if any, stands disposed of.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 20 April, 2023
Ukt/-