

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

Original Application No. 6 of 2014 (IAF)

Monday, the 14th day of December, 2015

**Reserved
(Court No. 2)**

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Ex-654624-B W.O. Shoaib Pasha, Rdo/Fit, son of Mohd. Wasiq, HQ.
S.W.A.C. (U) Air Force, Sector-9, Gandhi Nagar-9, R/o 4/158, Chhjoti
Masjid, Ziabad, Zamalpur, Aligarh.

..... Petitioner/Applicant

By Shri M.S.Yadav, Counsel for the Applicant.

Versus

1. Union of India, through Secretary, Ministry of Defence, Bharat Sarkar, New Delhi.
2. Chief of the Air Staff, Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi.
3. Commanding Officer, HQ. S.W.A.C. (U) Air Force, Sector-9, Gandhi Nagar-9.
4. Sergeant C.L.Kumar, Rdo/Fit 28 Squadron, Air Force, C/o 99 A.P.O.

5. Wing Commander Prashant Pai, Presiding Officer of Court of Inquiry, HQ S.W.A.C. (U) Air Force, Sector-9, Gandhi Nagar-9.

.....Respondents.

By Shri A.K.Singh, Counsel for the respondents alongwith Wing Commander S.K Pandey, Departmental Representative.

ORDER

1. This OA has been filed to quash the dismissal order dated 3.4.2012 passed by the Chief of Air Staff (CAS) reflected in speaking order dated 16.4.2012, quash show cause notice dated 16.12.2011, quash the proceedings, findings and recommendations of Court of Inquiry (COI) ordered vide terms of reference dated 30.9.2011 and to reinstate the petitioner in service.

2. Facts of the case are that the petitioner was enrolled in the Air Force on 23.7.1981 and was promoted to the rank of Warrant Officer on 1.11.2007. In September 2011, when he was posted to SWAC (U), IAF, a written complaint was received from Sgt C.L. Kumar of 28 Sqn, attached to HQ SWAC, against the petitioner about molesting his two minor girls Miss Pranavi aged about 11 years and Miss Raghavi aged about 8 years on 7.9.2011. A Court of Inquiry (COI) was ordered, which found the petitioner blameworthy of molestation of the two girls. The AOC-in-C, SWAC recommended dismissal of the petitioner in terms of Air Force Act Section 20(1) read with Rule 18 of the Air Force Rules. The CAS ordered dismissal under the said provisions. The

petitioner represented to the Central Government vide his application dated 17.7.2012, which was rejected.

3. The petitioner was represented by his learned counsel Shri M.S.Yadav. He states that the petitioner had an outstanding career and service profile and due to an inquiry he was placed in low medical category. He was posted to SWAC (U) IAF on 26.4.2010. He has two grown up children. The son was attending B.Tech and the daughter was in B.Com. He was living out in Sector 13 of Gandhi Nagar. The petitioner states that Sgt C.L.Kumar, who was attached as a sports-person with HQ SWAC, had an altercation with him on 6.9.2011 in SNCO's Mess, following which Sgt Kumar formed a gang of sports-persons and by planting his daughters concocted a false story to spite the petitioner.

4. The petitioner states that on 7.9.2011 when he was returning from market with his wife, his daughter informed him that two girls are pressing the call-bell repeatedly for donation. The petitioner's wife went up to the roof top to correct the dish antenna. In the meantime, the two girls came again. The petitioner says he paid them ten rupees but the girls insisted for more and followed him to the roof top. The petitioner says he intimidated them and slightly slapped on the head of one girl. She cried and went home. After 15-20 minutes, the petitioner states, Sqn C.L.Kumar, his wife and Cpl S.K.Singh came to his house and started quarrelling with him. The petitioner says, he told them about the

arrogance of the girls and then they went away. The petitioner states that Sgt Kumar proceeded on temporary duty the next day and returned on 18.9.2011. Sgt Kumar remained silent for another ten days and thereafter he submitted an application with embellished story on 28.9.2011. A COI was ordered and based on the recommendations of the COI, the draft of show cause notice (SCN) was sent to the Air Headquarters. The SCN was issued to the petitioner on 16.12.2011. The petitioner states, he was not given a copy of the COI. He gave a reply to the SCN, in which he stated that he was annoyed by the disturbance created by the children and they were sent back before his wife. The petitioner, in his reply, stated that how could he do such an act in his wife's presence. His reply was put up to the CAS by the JAG (Air) with the recommendation for dismissal. A speaking order was signed by a Group Captain on 16.4.2012. However, the order by the CAS was not disclosed to the petitioner, claims the petitioner.

5. The petitioner further states that the incident which took place at 2000 hrs on 7.9.2011 was investigated by a COI, which was held without the presence of the petitioner and thus Para 790 of the Regulations for Air Force was violated. The petitioner claims that the COI was biased as is evident from the questions put to the witnesses and Deliberations. The petitioner mentions para 3 of the Deliberations, wherein the Court opined that the petitioner had an intention to use the opportunity to commit the act of molestation. The proceedings of COI,

according to the petitioner, were unfair and illegal and the provisions of Air Force Rule 154(4) were not followed since no notice was given to any of the witnesses. The witnesses Nos. 3, 4, 5, 6 and 7 gave their statements in Hindi but the Hindi version of their statements was not brought on record. The petitioner also states that the evidences of witnesses Nos. 3, 4 and 5 as recorded by the COI are not true versions of their depositions. Further, the petitioner claims that a material witness, such as the bread-seller, was not examined.

6. According to the petitioner, the JAG (Air) made a false statement in his Note to the CAS to misguide the latter. The findings and recommendations as made by JAG (Air) are perverse and based on no evidence. Since Para 790 of the Regulations for Air Force has been violated, the testimonies of the witnesses in COI are barred by principles of natural justice. The petitioners states that the daughters of Sgt. C.L.Kumar were tutored and they stated what had been told to them.

7. The petitioner's counsel emphatically stated during the course of hearing that the CAS approved the drafts of SCN and the dismissal order, but he did not sign these documents. Section 20(1) of the Air Force Act gives the power of dismissal to the CAS which must be exercised by him personally and approving the draft is not enough; therefore, the SCN and the dismissal order signed by the Staff Officer are legally not tenable and deserve to be quashed.

8. The respondents were represented by Shri A.K.Singh, duly assisted by Wing Commander S.K.Pandey, Departmental Representative. The respondents narrate the incident wherein the two minor girls Pranavi and Raghavi had gone for collection of donation for poor students as part of their school activities. The petitioner came down to give donation. He took the girls to the terrace of the house by holding their hands and rubbed his private part on the elder girl from back side and held hands of the younger one. The COI found him blameworthy of molestation and accordingly his dismissal was recommended by AOC-in-C SWAC and approved by the CAS.

9. As regards Sgt C.L.Kumar taking 20 days to give a complaint in writing, the respondents state that considering the impact on the younger girls, the father deliberated over this and then gave a written complaint. The respondents on their part decided to take the route of administrative action and not of legal trial, as the trial would have meant for the girls reliving the trauma at three stages viz. initial hearing of the charge by the CO, the summary of evidence and the trial, and therefore this decision for administrative action.

10. The respondents state that the alleged incident of 6.9.2011 stated by the petitioner is totally fabricated and false. According to the respondents, Sgt C.L.Kumar did not visit SNCO's Mess on 6.9.2011. The respondents further state that Sgt Kumar was then a Corporal and not a Senior NCO and, therefore, he could not have gone to SNCO's

Mess not being its member. Also, we observe that the petitioner did not bring this incident earlier either during the COI or in his reply to the SCN or in his application to the Central Government.

11. As regards eye-witnesses, the respondents state, there were no eye-witnesses as such acts are not performed in public but out of public sight. In their testimonies, the two girls Pranavi and Raghavi did not mention the presence of petitioner's wife on the roof top. The averment of the petitioner that he gave rupees ten to the girls but they insisted for more, is a concocted story according to the respondents, as also the story about slapping of the younger girl. The statement of the petitioner that Sgt C.L.Kumar, his wife and Corporal S.K.Singh came to his house 15-20 minutes after the incident is totally false; Sgt Kumar had left at about 1630 hrs on 7.9.2011 to catch a train on a Sports TD well before 2000 hrs, the time at which the incident in question took place. The respondents say that copy of the COI was not given to the petitioner as he did not apply for it as provided in the procedure. However, he was allowed to peruse the COI which was kept in the office. The SCN and the dismissal were approved by the CAS and the speaking order was received by the petitioner on 24.4.2012. The petitioner's application dated 17.7.2012 to the Central Government was processed and was rejected which was communicated to the petitioner vide Air HQ letter dated 1.8.2013 alongwith Central Government's letter dated 30.7.2013.

11. The respondent further state that during the COI, Para 790 of the Regulations for Air Force was fully complied with as also prior notice had been given to all concerned and there is no violation of Air Force Rule 154(4). The Hindi version of the statements of the witnesses was transliterated in brackets or under quotation marks. The respondents state that the language is not specified in Air Force law. However, the testimonies of the witnesses are always recorded in English as the Air Force Rule 24(7) states that the statements will be recorded in English language. The respondents state that all provisions of law were complied with and the dismissal of the petitioner is legally valid.

12. Heard both sides and examined the documents.

13. The original records produced by the respondents during the hearing show that the SCN and the dismissal were approved by the CAS and thereafter the SCN and the dismissal order were signed on behalf of the CAS by the Staff Officer. We find no infirmity in this procedure.

14. The petitioner's statement that Sgt C.L.Kumar was present on 7.9.2011 and Sgt Kumar with his wife came to his house 15-20 minutes after the incident is blatantly wrong as Sgt Kumar had left at about 1630 hrs that day which has been corroborated by other witnesses during the COI. The petitioner is warned not to indulge in misguiding the Court.

15. In the petition as also in the COI, the petitioner stated that he had intimidated the girls and slapped one girl. In his reply to the SCN he did not mention this fact. He states, "*While assisting my wife on terrace*

(public area) for securing Dish antenna connection properly, I got annoyed of disturbance created by these children & they were sent back (SCN para 5) before my wife. Misunderstanding may be the reason. In my wife's presence, how can I be indulged in such kind of act?" There is an obvious mismatch between the two statements given by the petitioner in his petition and in his reply to the SCN. We are, therefore, of the view that the petitioner has been economical with truth about slapping the girl.

16. We have carefully read the COI in which ten witnesses including the petitioner, Sgt C.L.Kumar, two girls, namely, Pranavi and Raghavi, wife of Sgt Kumar and wife and daughter of the petitioner had given their testimonies. The bread-seller, in our view, was not a material witness. The two victim girls immediately after the incident went home and informed their mother about the entire episode. The relevant extract of testimony of their mother Mrs. C. Bharati is as follows:

"So again I went to WO Pasha's house. As soon as I went to his house and asked him, "aap mere bacchon ko upar kyon le gaye the", there was no response and reply from WO Pasha, but his whole face and eyes turned red and he fell on my feet in front of his wife and daughter. He said "madam mujhe maaf kar do". Daughter asked "kya hua anty, aur kab hua" there was no response from any one of them so I left back for my home as my daughters were alone. After this I gave a telephone call to my husband who was proceeding on T/D, and narrated the incident, he replied that I will come back from TD and resolve the matter."

The fact of informing the husband by telephone has been corroborated by Sgt Kumar, who stated, he received a phone call on 7.9.2011 at around 2100 hrs when he was at Vadodara Railway Station.

17. The victim Pranavi also gave a detailed account of the incident of 7.9.2011. The relevant extracts of her statement are as follows:

“Then uncle told us “ upar chalo upar accha hai, aur aaj mausam bhi aacha ho raha hai”. He held our hands and took us upstairs and kept on asking some questions like “tumhare papa ka naam kya hai ?”. “Tum SAI (Sports Authority of India) kab jate ho ? I was saying “uncle hame chood do, mummy wait kar rahi hai”. But he did not leave us. “Uncle ne peeche se pakda, chhua aur uncle jisse toiled karte hai us se mere peeche rub kiya” (He caught me from behind and touched me and rubbed his private part on my back side). He was also holding my sister’s hand. I escaped from his hand and ran away for a distance, but as I realized that my younger sister was left behind, so I went back again. I said “uncle use chood do”, but he caught both of us from behind and then was trying to do the same thing. Then we escaped and ran, uncle said that “tum done bahut ache lagte ho, phir wapas aana”. We both ran and then went home told the whole thing to my mother.”

This account has been corroborated by Miss Raghavi, aged about 8 years, who was examined as witness No. 5.

18. Based on the above statements of the witnesses, the COI found the petitioner blameworthy of molesting Miss Pranavi aged about 11 years

by holding her from behind and rubbing his private part on her backside, and for improperly holding Miss Raghavi aged 8 years.

19. Petitioner has alleged violation of Para 790 (a), (b), (c) of the Regulations for the Air Force 2003. This reads as follows:

“790. Action when Character, etc. of persons is affected.

(a) As soon as it appears to the court that the character or professional reputation of an officer or airman is affected by the evidence recorded, or that he is to blame, the affected person is to be so informed by the court. All the evidence recorded up to that stage is to be read over to the affected person, and the court is to explain to the person, if so required by him, how, in its opinion, it appears that the officer’s or airman’s character or professional reputation is adversely affected, or how he appears to be to blame.

(b) From the time an officer or airman is so informed, in accordance with sub-para (a) above he has the right to be present during all the ensuing proceedings, except when the court is deliberating privately. The fact that an officer or airman to whom this para applies is or is not present will be recorded in the proceedings.

(c) The affected officer or airman may, if he so desires, cross-examine any witness whose evidence was recorded prior to the action taken under sub-para (a) above. He may, likewise, cross-examine subsequent witnesses after their statements have been recorded. He may also request the court to record the evidence of any

witness in his defence. The officer or airman may make any statement in his defence.”

19. The Court considered that the character of witness No. 2 i.e. the petitioner likely to be affected and accordingly, the Court recorded its finding as follows:

“Action under Para 790 (A, b, c) of Regs of AF (1964) against witness No. 2

1. *From the evidence of the witnesses No 1, 3, 4 & 5 it appears to the court that the character of Witness No. 2 is likely to be affected for the following:*

(a) *For molesting witness No. 4 (11 year girl Pranavi) by holding her from behind and rubbing his private part on her backside.*

(b) *Improperly holding witness No. 5 at the terrace of his SMQ against her wish.*

2. *At this stage, witness No. 2 is called and the entire evidence recorded so far is read over to him. Further he is informed that his character is affected and he likely to be blamed for the following:*

(a) *For molesting witness No. 4 (11 year girl Pranavi) by holding her from behind and rubbing his private part on her backside.*

(b) *Improperly holding witness No. 5 at the terrace of his SMQ against her wish.*

3. *He is informed of the following rights:*
 - (a) *Right to present during all ensuing proceedings except when the court deliberating privately.*
 - (b) *Right to cross-examine any witness whose evidence has already been recorded.*
 - (c) *Right to examine any witness whose statement is recorded hereafter.*
 - (d) *Right to make an additional statement in his defence.*
 - (e) *Right to call any witness in his favour.*

4. *Witness No 2. Informs the court that:*
 - (a) *He does not wish to remain present in the ensuing proceedings.*
 - (b) *He does not wish to cross-examine any witness, neither wishes to produce any witness in his favour.*
 - (c) *He does not wish to make an additional statement.”*

21. We are of the view that the provisions of Para 790 of the Regulations of the Air Force have been complied with and there is no violation.

22. As regards bias on the part of COI, we find that no part of the COI including the questions and the Deliberations by the Court indicate any form of bias whatsoever and accordingly, the allegations made by the petitioner in this regard are rejected.

23. As regards the statements in Hindi, the Air Force Rules 24(7) reads as follows:

“(7) The evidence of the witnesses and the statement, if any, of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand English the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.”

Accordingly, the Court recorded the statements of the witnesses in English. The petitioner has stated in the petition that the testimonies of witnesses No. 3, 4 and 5 are not “true versions” of what they had stated. He states that true versions have not been brought on record.

24. The petitioner, however, has not disclosed as to where and how did he see the “true versions” of the testimonies of aforesaid witnesses. In our view, the petitioner has merely given vent to his imagination at the cost of true narrative. Evidently his allegation is frivolous.

25. As regards the motive on the part of Sgt. C.L.Kumar, the story put out by the petitioner in this petition appears to be fabricated and false and is, therefore, rejected. During the course of hearing, the petitioner’s counsel was asked as to what could be the motive; he failed to provide any answer. Apart from it, we find no motive on the part of Sgt. C.L.Kumar to falsely implicate the petitioner, that too at the cost of outraging the modesty of his minor daughters. The petitioner’s allegations with regard to Air Force Rule 154(4) too lack substance as

adequate notice had been given to all concerned. Accordingly, we find that the petition lacks merit and is hereby dismissed. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

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