

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 07 of 2014 (IAF)

Thursday the 17th day of September, 2015

Reserved
(Court No. 2)

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

Service No. 697306 Sgt. R.N.Pandey, Wpn Fit, son of Shri Gyan Dutt Pandey, resident of village Kheman Khera, Post Office Chahotar, District Raebareli, U.P.

..... Applicant

By Shri V.P.Pandey, Counsel for the Applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi
2. Chief of Air Staff Integrated Head Quarter of inistry of Defence, South Block, New Delhi-110001
3. Air Officer Commanding in Chief, Training Command Bangalore.
4. Air Officer Commanding. Air Force Station, Tambaram, Chennai.
5. Judge Advocate General (Air Force) Jt. JAG (Air)(Discip) Deptt of JAG (Air) Air Headquarters (V.B.) New Delhi.

.....Respondents.

By Ms. Deepti P. Bajpai, Counsel for the respondents alongwith WO D.R.Singh, Departmental Representative.

ORDER

1. Being aggrieved with the order of dismissal, the applicant has preferred this O.A before this Court, seeking the following reliefs:

“(a) To set aside/quash the dismissal dated 30 Aug. 2013 as contained in Annexure No A-1.

(b) To issue an order or direction to the Respondents, to reinstate the applicant in service with all consequential benefits.

(c) Any other relief considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(d) Cost of the appeal be awarded to the applicant.”

2. Brief facts of the case are that the applicant, who happened to be Sargent in Air Force, was posted to MTI, AF and was residing in Service Married Quarter (SMQ) No. P-20/7 Madambakkam Camp, Tambaram. One Sgt D.M.Tiwary, Rdo Fit was his next door fellow, residing in SMQ No. P-20/8. On 12.10.2012 at 10-30 hrs, it is alleged, when Sgt. D.M.Tiwary and his wife were not in their quarter and their daughter Miss Anjali Kumari, aged about 10 years was all alone, the applicant entered the quarter of Sgt. D.M.Tiwary without permission with the intention to outrage the modesty of Miss Anjali Kumari. Sensing his unusual presence Miss Anjali Kumari shouted for help, whereupon the applicant used physical force to prevent her from shouting and thereby caused injuries to her. It is further alleged that on hearing the shrieks of Miss Anjali Kumari, Mrs. Meenakshi Subramaniam and Mrs. Chhaya Amar reached the scene and witnessed that the applicant had caught hold of the minor girl by arms. On arrival of the aforesaid witnesses, the applicant set free the minor girl. He tried to hide his presence, but when the witnesses noted his presence, he fled away from the scene.

3. The matter was reported to the Station Authorities by Sgt. D.N.Tiwary, pursuant to which a Court of Inquiry was ordered at AF Station, Tambaram on 13.10.2012 to inquire into the circumstances if the applicant was involved in the alleged misconduct at Madambakkam Camp SMQ Area. During the Court of Inquiry, statements of various witnesses were recorded and it revealed that the applicant, unusually dressed, in drunken state had entered the residence of his fellow D.N.Tiwary in Madambakkam Camp Area, when D.N.Tiwary and his wife were not at home, with an intention to outrage the modesty of their minor daughter Miss Anjali Kumari. He deliberately did not seek any permission whatsoever while entering the quarter where Miss Anjali Kumari was all alone and was watching T.V on her bed. He executed the acts as indicated above in total disregard to the privacy, not adhering to the basic social norms, which was a misconduct unbecoming of a Sargent of the Air Force, hence his retention in Air Force was considered undesirable and he was dismissed from service.

4. Submissions of learned counsel for the applicant are that the applicant did not commit the misconduct as alleged. Miss Anjali Kumari was just like his daughter and he could not even think of committing any such act as has been alleged against him. It is further submitted that the allegations made by Miss Anjali Kumar against the applicant are bereft of truth. The whole story was cooked up by Mrs. Meenakshi Subramaniam and Mrs. Chhaya Amar, who, according to the applicant, were not in good terms with him. The testimony of witnesses

is not supported by medical evidence. The proceedings initiated against him were not in accordance with law. The dismissal order, therefore, being based on false grounds is liable to be set aside and he is liable to be reinstated in service with all consequential benefits.

5. Mrs. Deepti P. Bajpai, learned counsel for the respondents, in rebuttal, refuted the arguments of learned counsel for the applicant and submitted that the allegations against the applicant were found proved. The testimony of witnesses is trust-worthy and is fully supported by medical evidence. Her further submission is that proceedings initiated against the applicant were as per law. Considering the said misconduct of the applicant, his retention in Air Force was rightly held undesirable, hence there was no error in passing the order of dismissal against him.

6. We have heard learned counsel for the parties at length and have gone through the material on record.

7. As regards the submission of learned counsel for the applicant that the testimony of witnesses is not trust-worthy, we do not find any substance in it. Both the witnesses, Mrs. Chhaya Amar and Mrs. Meenakshi Subramaniam, have stated how they reached the spot on hearing the shrieks of Miss Anjali Kumari and what they had witnessed there. It is relevant to quote the English version of the statement of Mrs. Chhaya Amar, which is as under:

“My husband was going for guard duty. I had come out to see him off. After seeing him off when I came inside the house, I heard a feeble sound of someone shouting. As I came out of the door, the voice

was clearly heard. Also, came to know that it was Khushi's (Miss Anjali Kumari) voice. As soon as I heard Khushi shouting it came straight to my mind that Khushi was alone at home and so was Sgt RN Pandey. A thought came to me, in all probability it is Sgt Pandey who had entered the home, because Mrs Tiwary told me two-three days earlier itself the Sgt Pandey's behavior was not seeming good. She has also told me that Sgt Pandey had told her "Asha you are looking sweet sixteen" and whenever Smt Tiwary uses the staircase, Sgt RN Pandey used to come out his house and stand at the door. I knew that Khushi is alone at home because Mrs Tiwary came to me before going to AFWWA meeting and also told me to take care of Khushi as she was alone at home. Listening to Khushi's voice I also shouted loudly "Khushi what happened, why are you shouting?" Thereafter, I went running to Sgt Subramaniam's house and called him loudly, "Bhai Sahib come fast." He asked me what happened? Owing to anxiety I was not able to tell him clearly. As I was shouting 'Khushi – Khushi' Mrs Subramaniam came out hurriedly and ran towards Sgt Tiwary's house. I also ran behind her. Sgt Subramaniam came behind me carrying his child in arms. Smt Subramaniam ran very fast and reached Sgt Tiwary's before me. When I reached there I saw that the door was somewhat opened and Khushi had come out of the home and I saw Sgt Pandey inside Sgt Tiwary's house. I at once brought Khushi down by holding her hand and asked her "Khushi beta, what happened?" Khushi said "Uncle was killing me by strangling me." I brought Khushi to my house. I made her seated in the room, gave her water to drink and made her lie down. Then we started making calls. I asked Khushi the phone number of her father. I was unable to make any phone call due to anxiety. Then Smt Subramaniam gave a call to Sgt Tiwary from my mobile. Smt Subramaniam asked Sgt Tiwary to come home immediately. Sgt Tiwary was unable to listen clearly. Then he said that he would give a ring from another number. This time, Smt Subramaniam gave the phone to Sgt Subramaniam and Sgt Subramaniam spoke to Sgt Tiwary. I saw that Khushi's neck was reddish. I applied a little bit of oil to Khushi's neck and head and slightly massaged her. I gently caressed her and made her lie down. When I asked Khushi as to how she was, then Khushi said that she was having severe pain in the neck. She said "My mouth was closed, nose was closed

and I was unable to breathe.” At that time Khushi was terribly afraid, crying and was trembling. I felt her body warm. Thereafter, Khushi’ mother and father came together. Khushi’s mother was highly annoyed, crying and wanted to go up and beat Sgt RN Pandey. We forcibly stopped Khushi’s mother and told her to take care of Khushi first. Khushi also cried loudly by seeing her mother. Khushi was wearing only Chaddi and baniyan at that time. Sgt DM Tiwary asked Smt Subramaniam to bring Khushi’s frock from upstairs. Smt Subramaniam went up and brought Khushi’s frock. After putting on the frock to Khushi, her father and mother took her to SMC.”

8. The aforesaid testimony of Mrs. Chhaya Amar is corroborated by Mrs. Meenakshi Subramaniam, who too has stated on oath as under:

“On 12 Oct 12 at around 1025 h I was in my SMC No 20/2 when all off a sudden Mrs Chhaya Amar, residing at SMC No – 20/4 came to my home absolutely puzzled and crying saying that Miss Anjali Tiwary daughter of Sgt Tiwary is screaming at her SMC No 20/8. Mrs Amar was not being able to explain things properly as she was in a state of shock. Miss Anjali Tiwary was at her home alone as her father was pm duty and her mother was away for AFWWA meeting. I and Mrs Chhaya Amar rushed to Sgt Tiwary’s residence which is on the top of SMC No – 20/4 in which Mrs Chhaya Amar is residing. When we reached at Sgt Tiwary’s SMQ I saw Sgt Pandey, who resides opposite to Sgt Tiwary’s residence in SMQ No – 20/7, strangulating Miss Anjali and closing her mouth with other hand. I shouted “Kya ho raha Hai?” Sgt Pandey thereafter immediately left the girl and Anjali immediately rushed to the door to open it and came out crying to me and tightly hug me I knew it was a case of child abuse. As Mrs Chhaya took Anjali away I once again asked Sgt Pandey, “Kya ho raha hai bhai?” to which he said, “Kuch nahi, kuch nahi” and then he went hiding inside Sgt Tiwary’s home. We brought Anjali down to Sgt Amar’s SMQ and gave her some water and made her lie down in the bed to rest. The child was wearing summer vest and brief. We informed Sgt Tiwary at about the incident at 1033 h and he came to the camp within 10 minutes of our call alongwith his wife. We narrated the whole incident to

him. Later Sgt Tiwary asked me to bring the frock of from their home after which he immediately took her to MI Room. After about half an hour or so Sgt Pandey fled away from his SMQ. We were standing outside, and as he went past us I could smell him of liquor.”

9. It is evident from the statements of P.W.2 Mrs. Chhaya Amar and P.W.3 Mrs. Meenakshi Subramaniam that when they reached the spot, they found the applicant in the room of Miss Anjali Kumari. He was wearing a T-shirt and Lungi and was trying to hide himself. On hue and cry made by these witnesses and the victim, the applicant fled away from the scene. A phone call was given to the father of victim Sgt D.M.Tiwary, who was on duty. He came there within ten minutes of the call. He was told about the incident. The witnesses also told him that when the applicant was fleeing from the spot, smell of liquor was coming. The same day at 11 hrs Miss Anjali Kumari was taken to hospital for medical examination, where she was examined by C.S.Sanika, Flt Lt Medical Officer, who found swelling of front of neck.

10. We find that right from the beginning, the case of the respondents was that the applicant had tried to outrage the modesty of Miss Anjali Kumari and when she shouted for help, she was gagged, by which time the witnesses reached there and then the applicant left her and fled away from the scene. Victim Miss Anjali Kumari has narrated the whole incident in her statement, English version of which is as follows:

“My mother left for AFWWA meeting at 0930 h. While going she told me to bolt the door from inside and do not open the door for anyone. If someone comes, tell that no one is available at home. I, of course bolted the

door properly. But it perhaps did not get correctly locked. Thereafter, I started watching TV by lying down on my stomach. It was more than an hour since I started watching TV. All of a sudden I felt that someone has come and sat to my right. I was terribly afraid because I had closed the door from my side. Then I thought who else has come over here? Even the sound of footsteps could not be heard by me. As I turned around scared, I could see Pandey uncle. I said "Uncle you? Then he held my neck and throttled me. I shouted and kicked him and so he fell down. Then I again shouted "Aunty save me." Then he squeezed my neck and mouth. I was not getting oxygen, I was not able to shout either. I could see only darkness all around. Uncle was dragging me towards the main door. He was murmuring something. I could not clearly hear as I was unable to breathe. By that time Subramaniam aunty came. Uncle left me and hid behind the curtain. Uncle had bolted the door from inside. I could open the door with great difficulty. I came out after opening the door and went to Subramaniam aunty."

11. From the above statement of the victim, it is crystal clear that the applicant had molested the girl and when she made an attempt to cry for help, the accused squeezed her neck and mouth and dragged her towards the main door. This fact was established from the medical examination of this witness, which was conducted the same day at 11 hrs wherein swelling of front of her neck was found.

12. It is the admitted case that the applicant was seen in the house of the victim. Submission of Sri V.P.Pandey, learned counsel for the applicant is that he had not committed the act as has been alleged by the witnesses; rather he had entered the house of Sgt. D.M.Tiwary on hearing the cries of Miss Anjali Kumari as he treated her to be her daughter. We have scrutinized the evidence put forth by the respondents

in the shape of medical report and statements of P.W. 2 Mrs. Chhaya Amar and P.W.3 Mrs. Meenakshi Subramaniam; more particularly, the statement of P.W.4 Miss Anjali Kumari, the victim. The testimony of all these witnesses is intact, which finds full support from the medical evidence. On medical examination of the victim, swelling of her neck was found, which unequivocally establishes the case of the respondents that she was physically assaulted by the applicant in his pursuit to molest her. The applicant too did not deny that he had entered the residence of Sgt. D.M.Tiwary in T-shirt and Lungi. He knew fully well that at that time neither Sgt. D.M.Tiwary nor his wife was in the house and Miss Anjali Kumari was all alone there. His intention was clearly to molest the girl. The misconduct of the applicant was thus proved in its entirety by cogent and reliable evidence.

13. We also find that there was no motive on the part of P.W.2 Mrs. Chhaya Amar and P.W.3 Mrs. Meenakshi Subamaniam to falsely implicate the applicant in such type of crime by deposing against him. The testimony of these witnesses is trust-worthy. That apart, in catena of decisions, the Apex Court has held that in such type of cases, where modesty of a girl or woman is involved, her sole testimony is sufficient to warrant conviction. As already held above, in the present case, the testimony of P.W.4 Miss Anjali Kumari is intact and trust-worthy, being supported by medical evidence, hence the same cannot be ignored.

14. We find no error in proceedings initiated against the applicant. He was given a show-cause notice as provided under Rule 18 of the Air

Force Rules, 1950 and thus he was afforded an opportunity to put forth his reply to the charges, to which he replied. Considering his reply as well as the statements of the witnesses examined as P.Ws. 2, 3 and 4, the misconduct committed by the applicant was found to be proved. Considering the nature of misconduct, which was unbecoming of a Sargent of the Air Force, his retention in Air Force was found undesirable and he was dismissed from service under Section 20(3) of the Air Force Act, 1950.

15. In view above, we find no error in the order of dismissal dated 30.8.2013, contained in Annexure-1 to the O.A, which was passed with due application of mind and calls for no interference.

16. Accordingly, the O.A being devoid of merit is hereby dismissed. However, we make no order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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