

RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 146 of 2015

Tuesday, the 3rd day of October, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Devendra Singh Bhandari, Block No. P-162/1 MES Colony, Clement Town, Dehradun (Uttarakhand), PIN-248 001

.... Applicant

By Legal Practitioner **Shri Lalit Kumar**, Learned counsel for the applicant.

Versus

1. The Union of India through Secretary Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), New Delhi.
3. Chief of the Air Staff, Indian Air Force, Integrated HQ of MoD (Air Force) New Delhi.
4. Director General Armed Forces Medical Services (DGAFMS), Ministry of Defence, New Delhi.
5. Director General Medical Services (Army) Adjutant Genral's Branch, Integrated HQ of MoD (Army) New Delhi.
6. Additional Director General MNS (ADGMNS), Dte Gen of Medical Services (Army) Adjutant Genral's Branch, Integrated HQ of MoD (Army), 'L'Block, New Delhi-110001
7. Commandant, Command Hospital (Southern Command), Pune-1
8. Commanding Officer, 15 Air Force Hospital, C/O 41 Wing, Air Force C/O 56 APO

9. Gp Capt Dinesh Asthana (Ex Commanding Officer 15 Air Force Hospital) Through Director General Medical Services (Air Force) Integrated HQ of MoD (Air Force) New Delhi.
10. SOA, HQ SWAC, IAF, Gandhinagar (Gujarat).
11. Principal Controller of Defence Accounts (PCDA), Allahabad (UP)

...Respondents

By **Shri Bhanu Pratap Singh**, Learned Central Govt Counsel assisted by **Wg Cdr Sardul Singh**, OIC Legal Cell, representing respondents No. 1 to 8, 10 & 11 and **Shri Rohit Tripathi**, Learned counsel for respondent No. 9.

ORDER

Per Hon'ble Mr. Justice D.P. Singh, Member (J)

1. We have heard Shri Lalit Kumar, learned counsel for the applicant and Shri Bhanu Pratap Singh, learned Central Government Counsel appearing for the respondents No. 1 to 8, 10 & 11 assisted by Wg Cdr Sardul Singh, OIC Legal Cell as well as Shri Rohit Tripathi, learned counsel for respondent No. 9, and perused the record.
2. A young lady officer, Miss Meenakshi Bhandari, holding the rank of Captain in Military Nursing Service (MNS), who was made 'Ghost Rider' (from an American supernatural horror superhero film), seems to have been rushed into the hospital as pillion rider of Capt Divya on account of 90% burn injuries caused to her under suspicious circumstances, as is evident from the material on record, to be discussed hereinafter.
3. Miss Meenakshi Bhandari, aged about 23 years, was granted Commission in MNS the rank of Lieutenant in 2008, and after due

training she was posted in Military Hospital (MH) at Ambala Cantt (Haryana). While serving there, she, having unblemished service record, was promoted to the rank of Captain in 2010 and in Jan-Feb 2011, she was posted to 15 Air Force Hospital (AFH) at Jaisalmer (Rajasthan) under the command of Respondent No. 9. She joined at 15 AFH on 15.02.2011 and in terms of the demand, she was allotted Single Officer's Accommodation in the Officers' Mess. The Mess was having capacity to accommodate 40 unmarried officers in 40 quarters. Besides Meenakshi, there were two more Nursing Officers including one Capt Divya of the same age group, posted to 15 AFH, and they being married were staying in Married Quarters. It is alleged that on 20.04.2011, when Meenakshi had gone to the office of Respondent No. 9 in connection with some official work, the respondent No. 9 tried to molest her by making unwelcome advances towards her but any how she saved herself. Subsequently also, it is said that as and when the respondent No. 9 found Meenakshi alone, he used to make unwelcome advances towards her, which she initially ignored but later spurned, though this fact has been denied by respondent No. 9. Meenakshi had informed about these happenings to her mother. It is further alleged that in July 2011, despite the fact that there were quarters vacant in Officers' Mess, Meenakshi was asked to vacate Single Officer's accommodation in Officers' Mess and move to Temporary Married Quarter No. 10 (in short, TMQ-10), which was located at the distance of about 1 km from the Officers Mess in wilderness on road side.

Information about this development was given by Capt Meenakshi to her father, the applicant, who alongwith his wife, reached Jaisalmer and tried to meet respondent No. 9 for two days continuously, but all his efforts to meet him failed. However, he returned back to Dehradun leaving his wife (Meenakshi's mother) there to meet respondent No. 9. It was after great efforts that the mother of Capt Meenakshi could meet respondent No. 9. She drew the attention of respondent No. 9 to the plight of her daughter Meenakshi but he did not pay any heed to her request to keep Meenakshi in Officers' Mess nor did he approach the Air Force Station Commanding on the subject. In such a situation, in August 2011 Meenakshi took 30 days' leave and came to Dehradun alongwith her mother. On expiry of leave, Meenakshi rejoined her duty at Jaisalmer in September, 2011. Even thereafter, according to the applicant, harassment to Capt Meenakshi by respondent No. 9 continued.

4. It was on the night of 24/25.12.2011 at about 0130 hrs that the applicant received a call on his mobile No. 9456157159 from Capt Divya informing him that something serious had happened to Meenakshi, as a result of which she was being evacuated to Jodhpur and he should be ready to rush to MH Jodhpur. In the morning, the applicant received another call from a batch-mate of Meenakshi and an MNS officer posted at MH Jodhpur, informing him that Meenakshi had been brought to MH Jodhpur by air in a serious condition with 85 to 90% burn injuries and she was being evacuated by air from Jodhpur to Command Hospital (CH) at Pune and the

applicant should reach Pune only. The applicant and his wife through Air India Flight reached Pune Airport at about 1230 hrs on 26.12.2011. On reaching the CH Pune, the applicant came to learn that Meenakshi had already been brought there by air about two hours ago and she had been admitted to the Burn Ward. The applicant and his wife were permitted to see Meenakshi only through glass panels of the Burn Ward. Seeing her daughter in such a tragic condition because of burn injuries, the applicant's wife fell unconscious. The medical team informed the applicant that Meenakshi was in deep coma ever since she was brought there. It is alleged that the respondent No. 9 had also gone to Pune. He talked to various officers of the Hospital and medical team about Meenakshi's case, but he did not give audience to the applicant or his wife nor uttered even a single word in sympathy to them.

5. On 24.01.2012, the applicant was informed that Meenakshi had expired and her body was being shifted to the mortuary of the MH Pune. The applicant pleads that no post-mortem on Meenakshi's body was done to ascertain if she had been subjected to any foul play before suffering the burn injuries. However, the respondents assert that post-mortem was done and a copy of post-mortem report has been filed alongwith the counter affidavit. On 26.01.2012, the body of Meenakshi was handed over to the applicant and on 27.01.2012 he performed her last rites at Hardwar (Uttarakhand).

6. One strange, rather unusual thing that has come on record is that the applicant received so many condolence messages from various senior Army and Air Force officers, but none from respondent No. 9, though being the Commanding Officer of Capt Meenakshi it was his solemn duty to meet her parents and express his condolences with regard to sad demise of their daughter because of burn injuries.

7. The applicant vide his letter dated 15.02.2012 addressed to Respondent No. 8 with copies to other authorities, requested for supply of copy of post-mortem report, if any, and copy of the findings of the Court of Inquiry held at the place of accident, but they were not supplied, hence he made an application under the RTI Act, 2005 to the Public Information Officer, 15 AFH for supply of the copies of relevant documents. However, after more than three months, copies of Injury Report dated 18.01.2012 and the findings of the Court of Inquiry dated 09.03.2012 were given to the applicant. According to the finding recorded in Court of Inquiry, Meenakshi sustained burn injuries on account of 'error of judgment while crossing a naked heater', which apparently seems to be not true for the reason that no burn injury was found below the knees of Meenakshi. It is on the basis of such a false and fabricated injury report and Court of Inquiry (Annexure R-10), the death of Meenakshi was declared as not attributable to Military Service.

8. The applicant filed a writ petition (C) bearing No. 3042 of 2015 in the Hon'ble High Court of Delhi on 21.03.2015, which was

dismissed on 16.04.2015 with liberty to the applicant to approach the Armed Forces Tribunal, Regional Bench, Lucknow for redressal of his grievance, hence this OA.

9. In response to the arguments advanced by learned counsel for the applicant, it has been argued by learned counsel for the Union of India that there is nothing wrong on the part of the respondents so far as lodging of FIR and Court of Inquiry are concerned. According to the respondents, the police submitted final report, and since the burn injuries received by Meenakshi were found to be accidental, there was no reason to proceed further in the matter. He relied upon the Court of Inquiry according to which it is a case of accidental burn injuries, not attributable to Military service.

10. Shri Rohit Tripathi, learned counsel appearing for the respondent No. 9, has vehemently argued that the applicant's daughter Capt Meenakshi was shifted to TMQ-10 in pursuance to the decision of Mess Committee, hence he (respondent No.9) is not responsible for the untoward incident that had happened. He argued that the allegations made against respondent No. 9 are absolutely false and fictitious, and he would be happy in case the incident is held to be attributable to military service for payment of compensation, pension, etc. He further submits that even if the decision taken by the Mess Committee to shift Capt Meenakshi from quarters meant for unmarried officers to TMQ was an incorrect decision, the respondent No. 9 had no concern with it. He denied

that the respondent No. 9 had ever tried to molest Capt Meenakshi or had made unwelcome advances towards her at any time.

11. While preferring the present petition, the applicant has prayed for the following reliefs:

“(i) to quash the Injury Report dated 18.01.2012.

(ii) to quash the Findings of the Court of Inquiry dated 9th March 2012 (Annexure-A/11).

(iii) to quash the impugned Order dated 7th September 2012 passed by Respondent No. 10 by which the death of applicant’s daughter Capt (Miss) Meenakshi had been declared as being ‘Not Attributable to Military Service’.

(iv) to declare the death of applicant’s daughter Capt (Miss) Meenakshi Bhandari as being attributable to military service.

(v) to grant the consequential benefits to the applicant flowing from such declaration.

(vi) to direct the official respondents, more particularly Respondent No. 3 to constitute a high level of court of inquiry to investigate into the circumstances under which Respondent No. 9 had ordered applicant’s daughter Capt (Miss) Meenakshi Bhandari to vacate her authorized accommodation in the officers mess and to move to an unauthorized accommodation, namely, TMQ-10 Building where she sustained serious burn injuries under mysterious circumstances. The Court of Inquiry, so constituted, may be further directed to investigate the involvement of Respondent No. 9, if any, at different stages of the case as mentioned in the body of the O.A.

(vii) to direct the official respondents, particularly Respondent Nos. 2 and 3 to hold a departmental inquiry to ascertain as to whether there has been falsification of official documents (Injury Report and the Court of Inquiry) within the meaning of Section 57 of the Army Act and Air Force Act, and if yes by whom, with a further direction to take action against such persons as per law.

(viii) to award exemplary cost and compensation to the applicant as against the respondents.

and

(ix) to pass any other order which the Hon"ble Tribunal may deem fit and proper in the interest of justice."

12. The first limb of the arguments of learned counsel for the applicant is that the Court of Inquiry held and the findings recorded thereon on 09.03.2012 (Annexure A/11) are totally false and fictitious and they besides being unsatisfactory, suffer from malice and that no prudent man will believe on such findings as recorded by Court of Inquiry.

COURT OF INQUIRY

13. Court of Inquiry is held under Rule 156 of the Air Force Rules, 1969 (in short, the Rules). It provides that whenever any inquiry affects the character or service reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry. Sub-rule (9) of Rule 156 further provides for supply of a copy of the proceedings of the court of inquiry on payment. Under Rule 154, a previous notice is to be given of the time and place of the meeting of a court of inquiry, and of all

adjournments of the court, to all persons concerned in the inquiry, and proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court. For convenience, Rule 154 of the Rules is reproduced below:

“154. General.—

(1) A court of inquiry is an assembly of officers or of officers and warrant officers directed to collect evidence and if so required, to report with regard to any matter which may be referred to them.

(2) A court of inquiry may be assembled by the officer in command of any unit or portion of the Air Force.

(3) The court may consist of any number of officers of any rank or of one or more officers together with one or more warrant officers. The members of the court may belong to any branch or department of the service, according to the nature of the investigation.

(4) Previous notice shall be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry (except a prisoner of war who is still absent).

(5) It is the duty of a court of inquiry to put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

(6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court.

(7) The court may be reassembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witnesses, or recording further information.”

14. Rule 155 deals with regard to illegal absence. However, for all other inquiries, Rule 156 seems to apply.

15. Chapter XXV, Regulation 781 to 810 of the Regulations for Air Force contain the procedure with regard to Court of Inquiry. The composition of Court of Inquiry has been given in Regulation 783. Its assembly is provided under Regulation 785. Regulation 786 deals with the attendance of witnesses and Regulation 787 with regard to collection and admissibility of evidence. Regulation 788 provides how the proceedings be held and evidence be recorded. For convenience, Regulations 786, 787 and 788 are reproduced as under:

“786. Attendance of Witnesses.

(a) The presiding officer of a court of inquiry will, as far as possible, obtain beforehand details of the witnesses whose evidence appears to be necessary. The court shall also record the evidence of any other witness whose statement may be material to the investigation.

(b) A court of inquiry cannot compel the attendance of civilian witnesses; if, after being invited to attend, a civilian witness declines to do so, the court will invite him to make a statement in writing.

(c) Applications for attendance of witnesses other than those serving the station where the court of inquiry has been convened will be made as follows, in writing, stating

the date, time and place where the witnesses will be required:-

(i) For witnesses belonging to any branch of the armed forces-To the Headquarters of the command, formation or department concerned.

(ii) For civilian police witnesses-To the officer-in-charge of the local police station or the superintendent of police of the civil district to which the witness belongs.

(iii) For other civilian witnesses-To the witness personally and, if considered/advisable, to his employer also; if there is, difficulty in tracing the address of such a witness, the assistance of the local civil police may be requested.

787. Collection of and Admissibility of Evidence.

(a) A court of inquiry is not a judicial tribunal. It may, therefore, receive such evidence as it may think fit, whether written or oral, the sole test being that it should be relevant to the issue. A court of inquiry is NOT bound to exclude evidence which would be inadmissible in a court of law.

(b) A court will ask such questions of any witness as it may think necessary, but a witness cannot be compelled to answer a question where the answer might incriminate him.

(c) It is the duty of a court to secure evidence, if necessary by visiting the scene of occurrence, and to examine it carefully with view to :-

(i) finding out exactly what happened so that action may be taken, if necessary, to prevent a similar occurrence in future;

(ii) bringing out facts indicating negligence or lack of discipline.

(d) The evidence given at a court of inquiry will be treated as confidential and will not be divulged by or to any person except as may be required by higher authorities.

788. Proceedings of a Court of Inquiry and recording of Evidence.

(a) *A court of inquiry is not a public court and should normally sit in private. Except as provided in para 790 below, a witness will be excluded from the sitting of a court unless he himself is under examination or cross-examination.*

(b) *As far as possible, evidence should be recorded in chronological order. Each witness should be given a serial number and his statement should begin with brief details of his service particulars if he is a service witness, or his name, address, etc, if he is a civilian witness, followed by a brief description of his duties or his position.*

(c) *The evidence of witnesses in examination and cross-examination should be recorded in first person narrative form and not in the form of questions and answers unless the court thinks fit to record any particular question or answer as such.”*

15. Regulation 791 deals with the finding of Court of Inquiry and Regulation 792 contains the procedure for preparation or transmission of proceedings. Regulation 795 provides that the Court cannot admit liability in respect of any matter being investigated by it or to initiate or defend any legal proceeding or negotiate or accept any settlement of any claim. For convenience Regulations 791 and 795 are reproduced as under:

“791. Findings.

(a) *The court will, in every case where it is so required, record its findings on the proceedings, and will be careful to ensure that such findings are supported by evidence and cover the points upon which it is required by the terms of reference, or by regulation, to report. It will note any*

particular point on which it is unable to record a complete finding and the reasons for the same.

(b) Courts of Inquiry should endeavour in their findings to differentiate between incidents caused by error of judgment not involving disregard of orders, etc, and incidents due to disregard of orders or other causes directly within the control of the personnel involved. The court should not regard itself as debarred from making the required differentiation even if it is impossible, on account of the death of the personnel involved or from other cause to obtain evidence or a statement in defence.

(c) In determining the degree of responsibility of any persons for a loss, damage, etc, the court will endeavour to determine:-

(i) Whether the person was directly or indirectly to blame,

(ii) Whether the loss, damage, etc, was due to culpable negligence or to negligence or to irregularity on the part of that person.

(d) The court will draw attention to any irregularity disclosed in the course of the investigation even though in its opinion, it was not a contributing factor to the incident under investigation and is outside its terms of reference.

(e) When the court is of opinion that compensation should be paid by any person or persons deemed to be responsible, it will state the amount that it considers should be paid by such persons, but any recommendation made by it will be considered as being made without prejudice to any action that may be taken by higher authority.

(f) The findings will be signed by the presiding officer and all the members of the court, but any member of the court may, if he thinks that he should do so, sign subject to any reservations which he desires to make, or may express his dissent from any findings of fact or recommendation arrived at by the other members.”

*“795. **Court cannot admit Liability.** A court of inquiry, or any member thereof, must not make any admission of liability in respect of any matter being investigated by it, or give any undertaking to satisfy any claim, or to initiate or defend any legal proceedings, or negotiate or accept any statement of any claim made by or on behalf of, or against the air forces or any unit or member thereof.”*

16. However, with regard to personal injuries and accidental deaths, Regulation 796 lays down a different procedure than regular Court of Inquiry. For convenience, Regulation 796 is reproduced as under:

“796. Investigation of personal injuries and accidental deaths.

(a) When an officer, airman, or flight cadet, whether on or off duty, is killed or injured (except by wounds received in action), the following procedure will be followed.

(b) A court of inquiry will invariably be assembled.

(i) If suicide or attempted suicide or willful maiming is suspected.

(ii) If, in the opinion of the commanding officer, doubt exists as to the cause of the incident.

(iii) if, in the opinion of the commanding officer, doubt exists as to whether the officer/airman/flight cadet was on or off duty at the time of the accident.

(iv) If the death or injury was sustained in flying accident (also see paras 793 (a) and 799).

(v) If the circumstances of the accident are such that it appears that some third party might be held liable therefore and the cause of the accident cannot be established by investigation under sub para (c).

(vi) If for any reason the cause of the accident or its attendant circumstances require, in the opinion of the commanding officer, to be investigated but cannot be adequately established by an investigation under sub para (c).

(c) In the following circumstances, subject always to sub para (b) and the holding of court inquiry as requisite under the provisions of that sub para, an investigation by one officer will take the place of a court of inquiry.

(i) If death occurs as the result of an accident or misadventure of any description.

(ii) If the injury is, in the opinion of the medical officer, serious or of such a nature that it might be the exciting cause of disability later. (This investigation will be dispensed with, if the commanding officer is satisfied that it would add nothing, to the report on IAFF (P) 23. IAFF (P) 23 will be endorsed to this effect).

(iii) If, for any reason the cause of an accident or its attendant circumstances require, in the opinion of the commanding officer, to be investigated and

can be adequately established without the holding of a court of inquiry.

(iv) If the circumstances of the accident are such that it appears that some third party might be held liable therefore.

(d) The commanding officer will detail an officer or investigate, obtain statements from witnesses, witness their signatures and report on the circumstances as laid down in sub paras (g) and (h). The officer will record all available details of the accident and make a complete report, which, together with the opinion of the commanding officer will take the place of the findings and recommendations of a court of inquiry. Paras 786 (a) and 792 (f) will be complied with so far as their provisions are applicable.

(e) A commanding officer may detail a warrant officer to carry out the investigation as laid down in this sub para where an airman below the rank of warrant officer is concerned unless the death or injury arises from a road or transport accident when the investigation will invariably be carried out by a commissioned officer.

(f) If under para 793 (a), personal injuries are dealt with by a court of inquiry convened to investigate other matters as well as injuries, the court will comply with sub paras (g) and (h) below.

(g) A court of inquiry or an investigating officer dealing with injuries will obtain evidence to show whether or not the injured person was on or off duty at the time he received the injury, and whether he was to blame, and will record an opinion on these points. Where, however, no evidence beyond that of the injured person himself is

forthcoming, the fact will be stated in the proceedings and the court or investigating officer will not express, such an opinion, but in transmitting the proceedings the commanding officer will do so.

(h) When an officer/airman/flight cadet is injured in any way by or through the fault of, some other person or persons, it will be recorded in the proceedings of the court of inquiry whether the officer/airman/cadet intends to claim or has claimed compensation from such other person or persons. If the officer or airman does not propose to prefer a claim against the third party it would be open to the air officer preferring a claim should therefore be recorded. Corresponding information so as it is available, will be recorded if the inquiry is fatal.

(j) After the opinion of all higher authorities, including AOC-in-Command, has been recorded on the proceedings the court of inquiry/formal investigation, a copy of the proceedings will be sent to Air Headquarters for attachment to the service documents of the officer/airman/flight cadet concerned.”

17. A combined reading of the aforesaid provisions indicates that the Court of Inquiry shall not record a conclusive finding with regard to liabilities of parties and it is for the Commanding Officer to apply mind with regard to accidental death of an officer. The Commanding Officer shall also under clause (v) of Regulation 796 find out and record his opinion with regard to involvement of third party in accidental death and if he finds that for some reasons, it is not possible to find out the cause of accidental death and some third

party might be held liable, the Commanding Officer shall detail a person to investigate and obtain statements of witnesses.

18. Pleadings on record show that the Court of Inquiry assembled on 26.12.2011 at 1000 hrs. The Court visited the scene of occurrence on 28.12.2011 at 1200 hrs to 1225 hrs and prepared a sketch map of the scene of incident. A brief narrative of the events was prepared on 26.12.2011 by Wg Cdr R Tiwari, the Presiding Officer of the Court. Statement of witness No. 1 Capt Divya Jagdish was recorded on 27.12.2011. Statement of witness No. 2 WO B Das Rdo/Tech was also recorded the same day i.e. 27.12.2011. The foundation of the findings of Court of Inquiry is the statement of Capt Divya MNS. For clarity, transparency and to meet the ends of justice, it is necessary that the statement of witness No. 1 Capt Divya MNS and the cross-examination done to her by the Court may be reproduced, which is as under:

“Witness No. 1 NR 21428-A Capt Divya MNS of 15 AFH states as follows:-

At round 0015 hrs, I received a call from Capt Meenakshi Bhandari on attending which I was unable to hear anything clearly but only a sobbing sound saying “Divya Miss”. I knew she was in distress and immediately rushed to her house on my two wheeler. When I reached there I saw her standing without her clothes at the door, her body had turned black and her hair was still burning. I rushed inside the room, grabbed a blanket, doused the fire from her hair, covered her with the same blanket and tried to make her sit on the scooty. As she had gone stiff, she could not do that. I then lifted her up, made her sit in

a slanting way, tied one end of the blanket with the back handle of the vehicle, tied the other end with the pocket of my jacket and made her lean on me. I then took her to the hospital. On reaching 15 AFH I took her to ICU, made her lie down, covered her with a bed sheet, and went to the DMA room to call him. He (Sgt Pathak) in turn called DMO and management began.

During my encounter and throughout the way to 15 AFH, when I asked about the incident, she quoted as, follows. She was working on her laptop in her drawing room with a coil heater near her chair. When she felt sleepy, she got up to switch off the TV and Laptop. She unknowingly crossed the heater to reach the switch. At this time, the skirt (wrap around) she was wearing came in contact with the heater and caught fire. As it was of a synthetic material, the fire spread very rapidly. She tried to open the knot but could not. She ran out for help with the skirt on fire to the neighbour who stays in T9, who did not open the door. She came back to the room and tried pouring water on herself but she could not lift the bucket. Then she called me from her mobile but could not speak.

*Sd/- x x x
(Divya Jagdish)
Capt
27 Dec 11*

<i>Sd/- x x x (R Tiwari) Wg Cdr 27 Dec 11</i>	<i>Sd/- x x x (Shekhar L Dorle) Flt Lt Member</i>	<i>Sd/- x x x (SN Paul) JWO Member</i>
<i>Presiding Offr</i>	<i>Member</i>	<i>Member</i>

Question by Court to Witness No1

Q.1. Did you see any other person in or around TMQ-10 when you reached there?

Ans. No, I did not see any person other than Capt Meenakshi Bhandari when I reached TMQ-10.

Q.2. What did you noticed in the room where you think the fire incident took place?

Ans. When I entered the room a coil heater was kept very close to a garden chair. Lower portion of the garden chair was burnt. The heater was on and I switched it off. TV was also on but I did not do anything. The curtain on the window was fully burnt and a laptop was lying on the floor. I did not touch the laptop.

Q.3. Why did you take her to the hospital on your two-wheeler instead of calling an ambulance?

Ans. As the patient was already in shock & I wanted to bring her to the hospital as soon as possible. I felt it right to take her on my two wheeler at that point.

*Sd/- x x x
(Divya Jagdish)
Capt
27 Dec 11*

<i>Sd/- x x x (R Tiwari) Wg Cdr 27 Dec 11 Presiding Offr</i>	<i>Sd/-x x x (Shekhar L Dorle) Flt Lt Member</i>	<i>Sd/- x x x (SN Paul) JWO Member"</i>
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19. From a plain reading of the statement of Capt Divya, it appears that at 0015 hrs she received a call from Capt Meenakshi with a sobbing sound saying "Divya Miss". Since she knew that Meenakshi was in distress, she immediately rushed to her house on a two-wheeler. When she reached there, she found Meenakshi standing without her clothes at the door. Her body had turned black and her hair were still burning. This witness rushed inside the room, grabbed

a blanket, doused the fire from her hair, covered her with the same blanket and tried to make her sit on the scooty. As she had gone stiff, she could not do that. This witness then lifted her up, made her sit in a slanting way, tied one end of the blanket with the back handle of the vehicle, tied the other end with the pocket of her jacket and made her lean on her. She took her to 15 AFH where she made her lie down, covered her with a bed-sheet. Sgt Pathak reached there and called DMO. It is alleged in the statement that through the way to 15 AFH, Capt Meenakshi narrated the incident and informed this witness that while she was working on her laptop in her drawing room with a coil heater near her chair. When she felt sleepy, she got up to switch off the TV and laptop. She unknowingly crossed the heater to reach the switch. At this time the skirt she was wearing came in contact with the heater and caught fire. As it was of a synthetic material, the fire spread very rapidly. She tried to open the knot but could not. It is said that she ran out for help with the skirt on fire to the neighbour, who stayed in T-9, but he did not open the door. She came back to room and tried pouring water on her but she could not lift the bucket. Then she called this witness from her mobile but could not speak.

20. The factual matrix stated by this witness with regard to the incident and information communicated to her by the deceased (Capt Meenakshi) makes her a ghost pillion rider, who can talk, speak and give factual narration of the incident in spite of her being tied with a blanket and seated in a slanting way. A man of common

prudence shall never believe that a lady with 90% burn injuries would be standing at the door and keep on speaking as a pillion rider upto hospital. The medical report shows that Capt Meenakshi was in serious coma stage and never opened her eyes. The Court did not feel it proper to ask a question from this witness as to how Capt Meenakshi having 90% burn injuries, wrapped in a blanket and sitting in a slanting way on her scooty, had given factual narration of the incident to her?

21. Witness No. 2 WO B Dash, Rdo/Tech reached the scene of occurrence when the police and other authorities had already arrived. He noticed one door curtain and garden chair bottom burnt besides one plastic mat and one pair bathroom slippers partially burnt. This witness was not cross-examined by the Court or anyone.

22. Witness No. 3 Sgt AK Pathak was the Duty Medical Assistant on 24.12.2011. At about 0020 hrs he was informed that Capt Divya had brought Capt Meenakshi to hospital. He immediately informed the DMO. After arrival of DMO, on diagnosis it was found to be a case of mixed burns approximately 90%. Capt Meenakshi was under treatment in ICU till 0730 hrs in the morning when she was airlifted to Jodhpur for admission and further treatment at MH Jodhpur.

23. Witness No. 4 is Sqn Ldr DK Boro, who affirmed that Capt Meenakshi had about 90% mixed burn (superficial and deep) **sparing only both legs.** He also affirmed that Capt Meenakshi was airlifted to MH Jodhpur at 0730 hrs on 26.12.2011 and an intimation

of the incident was given to the civil police on 25.12.2011. In cross-examination, the witness stated that the condition of Capt Meenakshi Bhandari was so bad that she could not speak.

24. Thus, from the statement of Sqn Ldr DK Boro, there is no room for doubt that the condition of Capt Meenakshi with deep and superficial burn to the extent of approximately 90% was so bad that she was not in a position to speak. If this was her condition, how she could narrate the incident to Capt Divya when she was being brought to hospital by her on scooty, is not understandable.

25. Witness No. 5 is KN Gupta, AE (Civil) GE (P) AF Jaisalmer. He stated that he was staying in TMQ No. 09 and in the night of 24.12.2011 at about 2340 hrs (11-40 p.m) he heard unusual sound of a lady. He saw through AC window one lady fully ablaze approximately at 0000 hrs. (12 O'clock) coming towards his quarter. She knocked the door of his house with full force. She was shouting, "Help me", but he did not open the doors as he was afraid of it. Later on, he noticed that one lady came to TMQ-10 and took her. After seeing the lady with fire, this witness telephoned to GE (Project) Deepak Koshta at 0010 hrs and informed him about the incident. He arrived there at about 0025 hrs and reported the matter to Guard Room. Since this witness was the neighbour of late Capt Meenakshi, it would be appropriate to reproduce his statement in its totality, which is as under:

"Witness No. 5 MES No. 121026 Shri KN Gupta AE (Civil) GE (P) AF Jaisalmer states as follows:-

I am staying in TMQ No. 09 since 19 Nov 2011. On 24 Dec 2011 at about 2340 approximately heard unusual sound of lady. I got up and again I heard same sound I saw through AC window one lady fully ablaze in to fire approximately 0000 hrs. One lady full with flame coming towards my quarter. She knocked the door of my house with full force. I held the doors but did not open as I was afraid of it. After few minutes she went back. She was shouting-“Help me”. I could make out that she need help. Meanwhile one lady came to TMQ-10 in a two wheeler and took her.

After seeing the lady with fire I had telephoned to my GE (Project) Mr Deepak Koshta at 0010 hrs and intimated him about the incident about 0025 hrs he arrived at my quarter and reported the matter to Guard Room.

*Sd/- x x x
(KN Gupta)
AE (Civil)
28 Dec 11*

<i>Sd/- x x x (R Tiwari) Wg Cdr 26 Dec 11</i>	<i>Sd/- x x x (Shekhar L Dorle) Flt Lt Member</i>	<i>Sd/- x x x (SN Paul) JWO Member”</i>
<i>Presiding Offr</i>	<i>Member</i>	<i>Member”</i>

Question by Court to Witness No. 5

Q6. What did you perceived after you saw the lady with fire on her clothes?

Ans. On hearing of some lady sound, I woke up from sleep and was not very alert. Suddenly I saw the lady with flames coming out from her body outside my quarter; I could not perceive the situation as I have not seen such incident before in my life.

Q7. Are you aware of your neighbourhood? Who is staying in adjacent TMQs?

Ans. No. As I reported on posting on 10 Nov 11 and shifted to T-9 on 19 Nov 11 from TANOT (Officers Institute). After that on 07 Dec 11, I went to Bhuj on TD followed by sick leave for 09 days. I came back on duty on 21 Dec 11. Also I was busy in the project works which involves lot of running around so I did not know that who is staying in adjacent TMQ.

Q8. What was the intensity of fire on her body when she came to your quarter?

Ans. I saw flames rising up to approx one foot above her body and her entire body was surrounded by the flames. I also saw burning pieces falling from her body.

Q9. What stopped you from opening the door when you saw the lady in flames?

Ans. I was shocked seeing such thing first time in my life and I was frightened so I did not open the door. After the incident I was so upset that I went along with the GE and stayed at his quarter for the night.

Q10. Did you see any other person in or around TMQ-10?

Ans. No, I did not see any person.

Sd/- x x x
(KN Gupta)
AE (Civil)
28 Dec 11

	Sd/- x x x (R Tiwari) Wg Cdr 28 Dec 11 Presiding Offr	Sd/- x x x (Shekhar L Dorle) Flt Lt Member	Sd/- x x x (SN Paul) JWO Member"
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26. A perusal of the aforesaid statement of witness No. 5 reveals that he woke up from sleep on the call of Capt Meenakshi, but he did not open the door. He was not aware as to who was staying in TMQ-10 but he had seen Capt Meenakshi in flames rising upto approximately one foot above her body and her entire body was surrounded by the flames. He also saw burning pieces falling from her body. The incident narrated by this witness makes the heart beat noticing the plight of a lady, who was burning inferno without any help from her neighbour, that too, being a civilian MES officer working with the Indian Air Force. In case the factual narration, as told by witness No. 5 is correct, then such a person, who has no courage to help a colleague struggling for life, does not deserve to remain in Government service. Any way, one foot rising flames above the body for even a few minutes would make a person unconscious and we do not feel that such a person would be able to speak while seated as a pillion rider on a scooty upto hospital narrating the incident. In our opinion, the statements of witness No. 1 Capt Divya and witness No. 5 KN Gupta are not worth credence, keeping in view the fact that the Commanding Officer (respondent No. 9) never visited the family of the deceased nor did he even send a condolence message to them on sad demise of their daughter.

27. The Court of Inquiry team visited the site at TMQ-10 on 28.12.2011 and prepared a sketch map of the scene of occurrence. It noted the remains of burnt clothes, garden chair, curtain of window, etc. A coil heater was found lying almost next to the garden

chair. A ball pen (red ink) was lying next to the garden chair and remains of paper burns were observed below the garden chair. A cotton cloth piece was also lying close to the heater. It appeared that the same was intended to hold handle of a utensil. Since Capt Meenakshi Bhandari was admitted in CH Pune and was not in a condition to speak, it was not feasible to obtain her statement and the COI team decided to address a questionnaire to her, which was prepared and forwarded to Capt Meenakshi Bhandari at CH Pune through Fax.

28. Witness No. 6 is Sub Binod Prasad, who reiterated the statement of Mr. KN Gupta (witness No. 5).

29. Witness No. 7 is Sgt Jayakumar, who was on duty in Guard Room. He reached the place of incident at latter stage and informed all concerned. He stated that he could not speak to Capt Meenakshi Bhandari.

30. Witness No. 8 is SI Durga Ram of P.S Kotwali, Jaisalmer. On 25.12.2011 he received the intimation from Air Force Station with regard to the incident in question. He visited the scene of occurrence the same day, but by the time he reached there, Capt Meenakshi Bhandari was transferred to CH Pune. He registered the incident in General Diary.

31. Witness No. 9 LAC VS Yadav filed 21 photographs taken from the scene of occurrence i.e. T-10.

32. Witness No. 10 Cpl Y Ahmed stated that he was detailed by Station IT Officer to check and verify the personal laptop of Capt Meenakshi Bhandari. He filed the report marked as Exhibit 'J'.

33. Witness No. 4 Sqn Ldr DK Boro again appeared on 27.01.2012 and made an additional statement. He averred that he received a telephonic message from CH Pune that Cap Meenakshi Bhandari admitted in CH had expired on 24.01.2012 at 1845 hrs. Later AFH received the death notification message. He filed the signal message and the investigation report, which are marked as Exhibit 'K' and Exhibit 'L'.

34. After considering the aforesaid factual position and statements of the witnesses, the Court deliberated and recorded a finding on 02.02.2012 as under:

“Deliberations by the Court

At this point considering the statements recorded so far, court is of the opinion that the cause of fire was error of judgment of Capt Meenakshi Bhandari. Her cloth (skirt) unknowingly came in contact with naked coil heater while trying to reach power switch for putting the heater off. Since she was wearing a wrap around skirt knotted around her waist, she while in panic state could not remove it. She could remove her jacket easily as it was not tied on the body. By observing the ashes and burn remains of papers below the garden/veranda chair it is a presumed that she was using a bunch of papers for writing. The papers also caught fire which she probably threw on the chair. Papers in all probability have increased the fury of fire. Burning papers could be the reason for melting of plastic weave only on bottom side of

the chair. Burning papers fell down due melting of plastic. This is also evident from the fact that the rods of the chair are black only from bottom side and not on the top.

Exhibit 'H-11'.

She ran out when realized that she is unable to control the fire. It is evident from the statement of W-4 that when she was seen outside TMQ-9 she was fully engulfed in flames. Notwithstanding with this she did not get any help from the neighbourhood as W-4 was in shocked state. It is difficult to ascertain the comparative amount of burns sustained at that point of time when Capt Meenakshi Bhandari ran to TMQ-9 for help and when she was taken to AFH by W-1.

*No unusual point is noticed in the browsing history of the laptop of Capt Meenakshi Bhandari. Court has also perused **call records** of her cell phone (Airtel Mobile no 9636742964) from 15 Dec-27 Dec 11. No unusual calls and call timings are noticed. Call records are marked as **Exhibit 'N'** and is annexed to the proceedings.*

An investigation was carried out into the incident by 8 P & S Unit (Dett). The report submitted by the Dett Cdr does not reveal any other unusual aspects in the cause of the incident.

	<i>Sd/-x x x</i>	<i>Sd/- x x x</i>	<i>Sd/- x x x</i>
	<i>(R Tiwari)</i>	<i>(Shekhar L Dorle)</i>	<i>(SN Paul)</i>
	<i>Wg Cdr</i>	<i>Flt Lt</i>	<i>JWO</i>
<i>02 Feb 12</i>	<i>Presiding Offr</i>	<i>Member</i>	<i>Member"</i>

35. A perusal of the report of COI indicates that no effort has been made to record the statement of Capt Meenakshi Bhandari at 15 AFH nor at MH Jodhpur, from where she was airlifted to Pune. The

physical and mental condition of Capt Meenakshi should have been verified by COI while recording the statements of Medical Officers of these two MHs, but for reasons best known to them, it was not done.

36. As per injury report, the Medical Officer informed that the cause of burn injuries to Capt Meenakshi was the burning heater while working on a laptop, but no injury was sustained below her knees. It indicates that there was some fabrication or concealment of material and the inquiry was fictitious. The communication sent by Sqn Ldr DK Boro with regard to the incident in question, which was later on registered as FIR, shows that the injuries sustained by Capt Meenakshi at T-10 were accidental and they were caused at the time of use of heater.

37. We have gone through the record including the photographs submitted by the police. There were burnt mat, table and some chairs, but one thing that picks to our mind is that the heater from which fire took place does not seem to contain the traces of burnt clothes, which was quite natural and consequently, the absence of burn injuries on both legs near ankle of the deceased also makes the prosecution theory untrustworthy. No member of Capt Meenakshi's family, either her father or mother, was called by the Court of Inquiry to make a statement. There is also nothing on record which may indicate that with regard to death of Capt Meenakshi any communication might have been made to her parents by the Commanding Officer or his staff, which seems to be necessary. We also do not feel that a lady would keep on giving factual narration of

the incident as pillion rider with 90% burn injuries, as stated by witness No. 1 Capt Divya. There were foot marks noted by the visiting team. Whether these foot marks were because of running of Capt Meenakshi in a zig zag way in the room or some one other than the deceased was there in the room, should have been investigated thoroughly by the forensic experts but no forensic report, if any prepared on the basis of finger prints and photographs taken from the place of occurrence, has been placed on record, though the site of incident shows some struggle or unusual happening having taken place in the room. For convenience, para 7 of the report on fire incident dated 16.01.2012 is reproduced as under:

“Site of accident

7. T/10 living in Officers’ accommodation is allotted to Capt Meenakshi and occupied by her alone since 25 Sep 11. T/10 is single storey building. It was seen at the site that the coil heater was kept near the Varandha Chair in drawing room of the quarter. One window curtain, table cloth kept on the tepoy, plastic knitted rest portion of the varandha chair and body cover of the laptop where partially burnt in fire. The black smoke marks were available on the wall near window. The remaining of the burnt clothes was seen scattered in drawing room, toilet and bed room entrance door of the quarter as well as outside the quarter in the vicinity of T/10 and T/9. The struggle marks of force opening the doors were also seen on the adjoining building T/9. The bare foot marks of Capt Meenakshi were available at all over the place inside the quarter. The fire in T/10 was put off at own without use of DFT and other means to put off the fire. The site of incident was photographed from all the angles

*and a rough sketch of the site was prepared. The copies of photographs and sketch of site of incident are annexed to this report as **Exhibit 'P1 to P8' & 'Q'** respectively.”*

38. There appears to be a *prima facie* case for Forensic Investigation of the site of occurrence to find out from finger prints with regard to any foreign element. Merely the statement of Capt Divya Jagdish, saying that a call was received by her from Capt Meenakshi is not enough to rule out the involvement of a third person in the episode. What work Capt Meenakshi was doing on laptop, is also not clear from the material on record though lap top was inspected by experts. In case she was doing some official work, then it shall be deemed to be an incident occurred while in military service. Otherwise also, she was on duty and not at her native place, hence she would be deemed to be in service of Air Force. The finding recorded by the COI, that no incriminating material was found from the site of occurrence appears to be an eye-wash for the reason that no forensic team seems to have inspected the scene of occurrence to investigate the presence of some other person on the spot, which would have been a material evidence to record a finding as to whether any struggle took place in the room when Capt Meenakshi suffered burn injuries. Capt Divya received the call from Capt Meenakshi. According to call report, it was made at about 0016 hrs on 25.12.2011. Then, how she reached the hospital at 0020 hrs, as stated by Witness No. 3 Sgt AK Pathak, is not understandable. There are major contradictions with regard to time

of incident and time of call received by Capt Divya Jagdish and time of her arrival at MH with Capt Meenakshi in burnt condition. This raises a reasonable doubt on the entire inquiry.

39. In the present case, no effort has been made by the Air Officer Commanding of the Station to find out nor is there anything on record to show that the matter was ever deliberated with regard to involvement of third party, keeping in view the situation of the room where Capt Meenakshi was staying. However, the Court of Inquiry recorded its finding that no third party was involved and injuries caused to Capt Meenakshi are not attributable to service. Recording of such a conclusive finding by Court of Inquiry is not in conformity with the Regulations (supra) and is an instance of exceeding its jurisdiction. Ransacked room and running in bewilderment by Capt Meenakshi within her premises indicate that it could happen on account of involvement of third party.

MESS ALLOTMENT OF TMQ

40. It is the categorical case of the applicant that Capt Meenakshi was shifted from Officers' Mess which has 40 quarters to accommodate 40 officers and majority of them were vacant. TMQ-10 is in a dilapidated condition and situates at a distance of about 1 km from Mess. It has been pleaded on behalf of the applicant that the respondent No. 9 did all this since Capt Meenakshi could not compromise her chastity. The submission made on behalf of respondent No. 9 is that he had no control over allotment of accommodations. According to him, such a control was with the

President, Mess Committee and it was the President, Mess Committee who had taken a decision to transfer Capt Meenakshi from Mess to TMQ. The relevant averments made by respondent No. 9 in paras 8 and 9 of his counter affidavit are reproduced herein as under:

“8. That AOC, 41 Wing was the Head of the Institution/Station. SMO/CO 15 AFH, medical officers, nursing officers and medical assistants were fully dependent on 41 Wing, AF for all support services, unlike an independent hospital where the Commanding Officer has control over administration, assets and accommodation. The control over accommodation for single/married officers and nursing officers was entirely vested with the AOC, 41 Wg through the Chief Administrative Office and the President, Mess Committee (PMC) as per the operational requirement of the station from time to time.

9. That SMO/CO 15 AFH had no power to allot/change accommodation for any personnel at 41 Wing, AF. The answering respondent, in the capacity of SMO/CO, 15 AF Hospital, was never assigned the secondary duty of PMC/Mess Secretary during his entire tenure at Jaisalmer.”

41. We do feel that by filing the counter affidavit, the respondent No. 9 has tried to conceal the material facts, even his power with regard to change of accommodation of Capt Meenakshi. Regulation 16 of the Regulations for the Air Force deals with the exercise of command. Regulation 51 defines the general responsibility of a

commanding officer and Regulation 52 deals with the personal responsibility of a commanding officer and delegation of duties. It shall be appropriate to reproduce Regulations 51 and 52 to understand the powers and duty of the Commanding Officer. To quote:

“51. General Responsibility.

(a) A commanding officer is responsible to the air officer commanding-in-Chief through the air or other officer commanding, if any, for the command, discipline, training, efficiency and proper administration of the station and/or unit or units under his command.

(b) It will be his duty to keep himself informed in detail of the organization and administrative arrangements in the units comprised within his command, and to render to his junior officers such advice and assistance as lie within his power.

52. Personal Responsibility of a Commanding Officer and Delegation of Duties.

(a) In the interest of efficiency a commanding officer must remain ultimately responsible for the whole of the organization and administration of his station or unit, but the distribution of work between himself and his subordinates is left substantially to his discretion. Broadly speaking, he should allocate to responsible officers, who are his immediate subordinates, all matters of routine and minor administration, retaining for himself questions of general organization, important matters requiring his personal attention and decision, and the general control and supervision of the various duties which he has allocated to others. As a general rule, regulations are not framed so as to distinguish between duties which a commanding officer must discharge personally and duties for which he is responsible but may entrust to others. A commanding officer should not however, regard himself as bound to carry out a duty

personally, unless the regulation expressly requires him to do so or it is of such importance that it cannot be delegated.

- (b) Subject to such general directions as may be given in regulations, the extent and matter of delegation is left to the discretion of the commanding officer to be decided in accordance with the size and nature of the unit, the character and experience of the subordinate personnel and the varying circumstances of the moment. Notwithstanding any delegation authorized in the following regulations, the commanding officer will retain general responsibility and keep in touch with the details of the daily life of his station or unit by occasionally scrutinizing and carrying out a check of the documents in question.”*

42. From the aforesaid provisions, it is undoubtedly the ultimate responsibility of the Commanding Officer to see that no illegality or irregularity or persecution of his subordinates is committed. No doubt the Mess functions under the direct supervision of the Air Officer Commanding i.e. Station Commander. It was the general responsibility of the Commanding Officer to keep himself in touch with the details of the daily life of his subordinates. In the present case, once Capt Meenakshi approached the Commanding Officer with respect to her shifting from Mess to TMQ, then it was his responsibility to apprise the Station Commander of her grievance and ensure that no injustice was done to her, but he failed in discharge of his moral and statutory obligations. There is nothing on record to show that the Commanding Officer ever wrote to the Station Commander requesting him to put Capt Meenakshi back to Mess Quarter from TMQ-10 pursuant to her request.

43. Regulations 1521 to 1539 deal with the supervision and maintenance of Officers' Mess. Under Regulation 1523, Mess Committee is to be constituted and under its clause (b) all decisions arrived at in the committees will be subject to the approval of the Station Commander. For convenience, Regulation 1523 is reproduced as under:

"1523. Mess Committee.

(a) The mess will be managed by a Committee consisting of a president, appointed by the Station Commander, a mess secretary and not less than two other full members, elected by a majority of those present at a general mess meeting. Elections to the Mess Committee will be subject to the approval of the Station Commander. Air Force, Army or Naval officers who are on the posted strength of the station and its lodger units may be elected to the Committee.

(b) All decisions arrived at in the committees will be subject to the approval of the Station Commander.

(c) A sub-committee will be presided over by one of the members of the Mess Committee."

Thus, it is evident that the Mess Committee discharges its obligations independently but with the knowledge of Station Commander. It appears that the request of change of residence of Capt Meenakshi was not brought to the knowledge of Station Commander by the Commanding Officer. Had the grievance of Capt Meenakshi been brought to the knowledge of Station Commander, he would have redressed the same by accommodating her suitably in Mess Quarters. Nothing has been brought on record to show that the Commanding Officer (respondent No. 9) had ever to redress the

grievance of Capt Meenakshi, though he was his bounden duty to redress the genuine grievance of his subordinate, that too of a lady officer.

44. On the other hand, the respondents have set up a case that Capt Meenakshi had joined and occupied Mess Quarter No. T-298/04 on 02.03.2011. She vacated the said quarter on 20.04.2011 and shifted to TMQ-16 the same day. In TMQ-16, Capt Meenakshi lived upto 30.09.2011 and thereafter she was shifted to TMQ-10 in pursuance to a resolution of Mess Committee.

45. Learned counsel for the applicant Shri Lalit Kumar has invited our attention to para 4.11 of the OA, according to which Capt Meenakshi was straightaway shifted to TMQ-10 and not to TMQ-16 as alleged by the respondents. For convenience, para 4.11 of the OA is reproduced as under:

“4.11 That Respondent No. 9, on finding that petitioner’s daughter was not yielding to his unwelcome and unwarranted advances, sometime in July 2011, in gross abuse of his power as CO and in utter violation of the relevant rules and regulations, ordered her to vacate the single officers’ accommodation in the Officers Mess and to move to building No. TMQ-10 (Temporary Married Quarter), which was not only located at a distance of more than one km in total wilderness from the Officers Mess and her place of work but also it was under orders for demolition. The said building TMQ-10 was meant for temporary occupation by the married officers awaiting allotment of permanent accommodation. It was not meant to be allotted to the single officers.”

46. In response to para 4.11 of the OA (supra), the Union of India in para 9 of the counter affidavit stated that the single officer's accommodation was allotted to Capt Meenakshi by the Officer Mess and not by the Commanding Officer and from the said accommodation, she moved to TMQ-10. Thus, the respondents have not disputed with regard to shifting of Capt Meenakshi to TMQ-10 from Mess Quarter in pursuance to a resolution of Mess Committee, but denied that it was done by the Commanding Officer. The fact of allotment of TMQ-16 to Capt Meenakshi and her stay in the said quarter has not been brought on record by the respondents while filing the counter affidavit.

47. The respondent No. 9 also in para 24 of his counter affidavit stated that the things were done by the PMC/Mess Secretary. He has also not denied that Capt Meenakshi's mother had tried to meet him but he declined, telling that allotment of accommodation was outside his scope and power. For convenience, reply of respondents No. 9 as contained in para 24 to the counter affidavit to para 4.11 of the OA in its totality is reproduced as under:

"24. That the contents of the paragraph no. 4.11 to 4.19 are false and misleading, hence, denied. It is submitted that the concerned officer i.e. Late Meenakshi Bhandari never raised any issue regarding the facts stated in the paragraphs under reply. All these facts have been fabricated and concocted. The most unfortunate part is that the father of the deceased person is coming forward with such weird and unfounded allegations involving his own daughter.

That it may be relevant to point out that after couple of months, exercise of re-allocation of Living-In Officers' accommodation was undertaken by the PMC/Mess Secretary.

It was then, that one day a medical assistant informed the answering respondent that mother of Late Capt M. Bhandari wanted to meet the answering respondent at SMC/Hospital. According to the request, the answering respondent told him to send her in, after examination of a patient was over. When the answering respondent actually met Capt. Meenakshi Bhandari's mother, he enquired about the reason for her visit. In response to the same, the visitor said that Capt M. Bhandari had been asked to shift to one of the TMQs of the Officers' Mess. The answering respondent politely and respectfully told her that allotment of accommodation is outside the scope of his powers and she should better meet the PMC for redressal of her grievance, if any.

Therefore, the allegation that the answering respondent refused to meet Late Capt M. Bhandari's parents or that he behaved rudely or misused his position is entirely false and baseless. At no point of time, did the answering respondent use any rude language or threatened either Capt. Meenakshi Bhandari or her family members. Additionally, the answering respondent had no power to allocate/shift any officer in the Officer's Mess. This power is vested with the PMC/Mess Secretary."

48. Keeping in view of the pleadings on record, we feel that Capt Meenakshi was allotted and shifted to TMQ-10 straightaway from Mess Quarter and she seems to have not lived in TMQ-16 as alleged by respondents. Thus, at the face of the record, it appears that the

respondent No. 9 has tried to conceal the material facts and he communicated incorrect information during the course of present judicial proceedings. It is apparent that a false case has been set up by respondent No. 9 to defend his action. Undoubtedly, Capt Meenakshi was shifted from Mess Quarter to TMQ-10. The reason is not understandable.

ENTITLEMENT OF CAPT MEENAKSHI WITH RESPECT TO RESIDENTIAL ACCOMMODATION

49. Regulation 1522 deals with the Membership of the Mess. According to clause (a)(i) of the said Regulation, all officers of the Air Force, Army and Navy, on the posted strength of the Station including the lodger units, if any, will be permanent members of the Mess. For convenience, Regulation 1522 is reproduced as under:

“1522. Membership.

(a) Permanent Members. *The following will be permanent members of the Officers Mess at an Air Force formation or unit:-*

(i) Officers of the Air Force, Army and Navy, on the posted strength of the Station including the lodger units, if any.

(ii) Auxiliary Air Force Officers during their continuous training periods, or when called up for service under Section 25 (b) or (c) of the Reserve and Auxiliary Air Force Act 1952.

Note: As permanent members under sub para (ii) Auxiliary Air Force officers may be ‘living-in’ members of the mess.

(iii) Air Force Officers on duty with local Army or Naval units provided that they are not permanent members of an Army Naval Mess.

(iv) Air Force officers on deputation to other Government departments in the area.

(b) Temporary Members. *The following will be temporary members of the Officers’ Mess at an Air Force formation or unit:-*

(i) Officers of the Air Force, Army and Navy, on temporary duty or attached to the formation or its lodger units.

(ii) Auxiliary Air Force officers when not member under para 1522 (a) (ii) provided they volunteer for such membership.

Note: As temporary members Auxiliary Air Force officers will not be permitted to live in the mess.

(iii) Flight Cadets on temporary duty or attached to a Station or its lodger units, provided there is no separate Flight Cadets' Mess on the Station.

(iv) Air Force Officers on leave away from their parent formations or units provided they are permitted to live in the mess by the formation/unit commander.

(v) Senior Division NCC officers on temporary duty or attached to a station or its lodger units provided there is no separate NCC Officers' Mess on the Station.

(c) **Honorary Members.** Except as provided in sub para (d) the following categories of persons may be invited to become honorary members:-

(i) Civilian gazette officers on the posted strength of or on temporary duty/attachment to the Station and its lodger units.

(ii) Retired officers of the Indian Air Force, Army and Navy.

(iii) Local civilian dignitaries.

(iv) Local Army/Navy Commanders.

(d) **Honorary members-categories prohibited.** The following categories of persons are not to be made honorary members:-

(i) Ex-officers of the Air Force, Navy and Army who have been dismissed, cashiered or compelled to resign from the Services.

(ii) Military officers, Attaches and civilians of foreign countries, unless specifically authorized by Air Headquarters.

(iii) Ladies.

(e) **Living in Members.** The following will be living-in members of a mess:-

(i) Single Officers of the rank of Wing Commander and below. (An officer of the rank of

Group Captain or above may at his option be a living-in-member).

(ii) Married officers below the age of 25 years unless specially authorized to live out vide sub para (f).

(iii) Widowers without children.

(iv) Officers attending courses of instruction (As laid down in the joining instructions issued by the head of the institution).

(v) Flight Cadets.

(f) Living-out Members. *The following officers may be permitted to be living-out members of an Air Force Officers' Mess:-*

(i) Married officers above the age of 25 years.

(ii) Widowers with children.

(iii) Single officers of the rank of Group Captain and above.

(iv) Single officers specially permitted to live out on extreme compassionate grounds.

Note: *Special permission to live out on compassionate grounds may be granted by the Air Officer Commanding in Chief in the case of officers who have lived in the mess for not less than three years and by the Chief of the Air Staff in the case of those who, have not lived in the mess for three years."*

Admittedly Capt Meenakshi was posted on the strength of 15 AFH, hence she was permanent member of the Officers' Mess.

50. Regulations 1712, 1713 and 1714 deal with the classification, reservation and allotment of quarters. For convenience the same are reproduced as under:

"1712. Classification of Quarters. *All officers quarters, whether Government owned, hired, leased or requisitioned will be classified in accordance with scales laid down in Barrack Synopsis/Government orders by a board of officers convened by the Station Commander. The GE shall be a member of the board.*

1713. Reservation of Quarters.

(a) Quarters will be reserved for AOC-in-C/AOC Group wherever they have been specifically built, purchased or leased by Government.

(b) An AOC-in-C may, at stations where there is a definite shortage of suitable houses, by notification in command orders, reserve quarters also for officers of the rank of Air Commodore when holding specific appointments on the staff of a command, provided he is satisfied that this course is necessary to facilitate the work of the officer holding the appointment concerned. Once such orders are published, they will be binding on successors in the appointment and will not be cancelled without the prior approval of the AOA.

(c) Apart from those mentioned above, no quarters will be regarded as reserved for officers holding particular appointments, but quarters specifically built for key personnel of MES installations will be regarded as reserved for them, although the special rules governing the recovery of rent or withholding of lodging allowance for reserved quarters will not be applied to them.

1714. Allotment of Quarters.

(a) All officers' quarters, other than single officers attached to messes will be held on a station pool. Allotment to individual officers will be made by the station commander, or, where more than one service is concerned, by the Inter Service Quartering Committee. The Barrack Stores Officer or the Senior Barrack Stores representative at outstations will be present on the Committee.

(b) Single officers' quarters attached to messes will be allotted by the station commander. He will send a copy of each allotment to the Barrack Stores Officer (MES).

(c) Station Commanders will ensure that officers and subordinates are allotted quarters of the class to which they are entitled; that all government quarters and messes, whether government owned, hired, leased or appropriated under the cantonments (House Accommodation) Act, No. VI of 1923, are fully allotted, having due regard to Air Force convenience and financial considerations; and that the interests of government in the matter of recovery of rent are safeguarded.

(d) If a commanding officer considers that for any reason (such as, for instance, the need for an officer being accommodated at a place fairly near his office, when married quarters to which he may be entitled are situated at a great or considerable distance from his place of work), it would be contrary to the interests of the service to allot a married quarter to an officer, who is otherwise eligible, he will submit details of his superior Air Force authority. If his view is supported, the case will be submitted to Air Headquarters, through the normal channels, for decision.

(e) In the case of an airman, the decision of the Station Commander/Officer Commanding Unit will be final."

51. A plain reading of clause (d) of Regulation 1714 shows that when a married quarter to which an officer is entitled, situates at a great or considerable distance from his/her place of work, it would be contrary to the interests of the service to allot a married quarter to such officer, who is otherwise eligible. In the present case, in no way, Capt Meenakshi being bachelor was entitled to TMQ whether

temporarily or permanently, but in violation of Regulation 1714, TMQ-10 was allotted to her and she was shifted from Officers Mess to said TMQ.

52. Undisputedly, Capt Meenakshi was allotted a quarter in Officers' Mess where she was residing after joining the strength of the station. All of a sudden, she was shifted to TMQ-10. In his counter affidavit, the respondent no. 9 has stated that the decision to change the accommodation of Capt Meenakshi was of Mess Committee and he had got no concern with it. Of course he had no power to allot or change of the accommodation allotted to an officer under his subordination, but he could write the Station Commander or the Mess Committee to redress the grievance of Capt Meenakshi for change of residential accommodation, but he did not. He appears to have left Capt Meenakshi to live up with the plight in which she was put into for reasons best known to him. This deliberate action or reluctance on his part puts a question mark on his conduct, which requires an inquiry and appropriate action into the matter. Why he has filed false affidavit concealing important statutory provisions, is not understandable.

53. Under Regulation 1721, a person posted at other station may retain the quarter at previous station for maximum 10 days and if he is married, he may shift his family after ascertaining the existence of vacancy. The case of married persons is to be dealt with in accordance to Regulation 1722. For convenience, the relevant portions of the said regulation is reproduced as under:

“1722. Grant of Ante-Date for Allotment of Married Accommodation.

- (a) *Officers, who are posted to stations where married accommodation cannot be provided to them, will, if posted to new stations after a service of not less than six months in the previous station have their seniority for purposes of allotment of accommodation at the new stations, ante-dated by half the period they have spent in the previous station of duty where married accommodation was not allotted to them, subject to a maximum antedate of 6 months. This provision will also be applicable to married officer posted to UK for courses of a period of more than six months, but less than one year and when they were unaccompanied by their families.*
- (b) *In case where an officer is not provided with married accommodation under any of the arrangements prescribed above continuously at previous stations (two or more) where he had stayed for over 6 months, as a whole and yet less than 6 months, in any individual station, he will be entitled to have his seniority ante-dated in the roster for married accommodation by half of the total periods of the service at the previous stations, subject to a maximum of 6 months, on arrival at his new duty place.*
- (c) *Service officers on posting to a family station from areas within India/Overseas where they were not permitted to take their families, after serving there for not less than six months, will have their seniority for allotment of accommodation at the new duty station ante-dated by half the period spent at the old duty station. In the case of officers posted to Delhi/New Delhi the period of ante-date is restricted to a maximum of 6 months.*
- (d) *In cases where the family of an officer continues to retain Government accommodation at the last duty station before the officer moved to an operational area, the officer on*

reposting to a new station will have his seniority ante-dated in the roster for married accommodation by half of the total period of service at the previous station, subject to a maximum of 6 months.

- (e) *In the case of an officer, who takes his family to J & K at his own expense, with the permission of the competent authority, no ante-date of seniority for allotment of accommodation will be given in the new station. However, in case where the officer is permitted to take his family to J & K, but does not utilise this permission, ante-date of seniority for allotment of married accommodation in the new station will be allowed in the normal course.”*

54. The letter and spirit of aforesaid provisions of Air Force Regulations is that married accommodation shall be allotted to married officers and no others. Keeping in view the fact that there were vacant rooms in Officers' Mess, there was no occasion for the respondents to shift Capt Meenakshi to TMQ-10. Under Regulation 1723, an officer who crosses the age of 25 years will be entitled for married accommodation. Regulation 1725 further provides that a married officer once allotted an accommodation, shall normally not be required to vacate the same. For convenience, Regulation 1725 is reproduced as under:

“1725. Vacation of Married Quarters.

- (a) *Once a married quarter has been allotted to an officer or an airman by proper authority and he has taken up occupation of the same, he will not normally be required to vacate the quarter, while on the strength of the station, unless circumstances arise which make the*

continued occupation of the quarter by the individual, his family or household inappropriate or impossible, or except under any of the following circumstances:-

(i) When the person to whom the quarter is allotted is posted away from the station.

(ii) When the person proceeds on temporary duty elsewhere for a period, which is expected to exceed six months.

(iii) When the person to whom the quarter is allotted is absent without leave for more than 30 days, and there is no satisfactory explanation for his absence.

(iv) When the quarter is required for use otherwise than a married quarter, or its continued use as a married quarter becomes impossible, e.g., by reason of the disposal of the quarter and alternative accommodation has been offered; and

(v) When, in the case of an airman the quarter is required for allotment to other entitled WO, NCO or aircraftman in accordance with station orders governing the allotment of married quarters in the station.

(b) In addition, misconduct, misbehaviour or a breach of station regulations on the part of the person to whom the quarter is allotted or of any member of his family, or any other person living in, or using the quarter, may lead to all its occupants being required to vacate it.”

55. From a combined reading of the Regulations (supra), it is borne out that the married quarters shall be allotted to married officers of the Indian Air Force who have crossed the age of 25 years. In view of above, allotment of TMQ-10 to Capt Meenakshi at a lonely and secluded place in contravention of the Regulations, seems to be an instance of high-handedness and suffers from

malice in law. It was the personal responsibility of the Commanding Officer conferred with the powers under Regulations (supra) to have a watch on his subordinates and advise station authorities, but he seems to have turned his deaf ears to the plight of Capt Meenakshi.

FINDINGS OF COURT OF INQUIRY AND INVESTIGATION

56. Regulation 796 deals with the investigation of personal injuries and accidental deaths. The same is reproduced as under:

“796. Investigation of personal injuries and accidental deaths.

(a) When an officer, airman, or flight cadet, whether on or off duty, is killed or injured (except by wounds received in action), the following procedure will be followed.

(b) A court of inquiry will invariably be assembled.

(i) If suicide or attempted suicide or willful maiming is suspected.

(ii) If, in the opinion of the commanding officer, doubt exists as to the cause of the incident.

(iii) if, in the opinion of the commanding officer, doubt exists as to whether the officer/airman/flight cadet was on or off duty at the time of the accident.

(iv) If the death or injury was sustained in flying accident (also see paras 793 (a) and 799).

(v) If the circumstances of the accident are such that it appears that some third party might be held liable therefore and the cause of the accident cannot be established by investigation under sub para (c).

(vi) If for any reason the cause of the accident or its attendant circumstances require, in the opinion of the commanding officer, to be investigated but cannot be adequately established by an investigation under sub para (c).

(c) In the following circumstances, subject always to sub para (b) and the holding of court inquiry as requisite under

the provisions of that sub para, an investigation by one officer will take the place of a court of inquiry.

(i) If death occurs as the result of an accident or misadventure of any description.

(ii) If the injury is, in the opinion of the medical officer, serious or of such a nature that it might be the exciting cause of disability later. (This investigation will be dispensed with, if the commanding officer is satisfied that it would add nothing, to the report on IAFF (P) 23. IAFF (P) 23 will be endorsed to this effect).

(iii) If, for any reason the cause of an accident or its attendant circumstances require, in the opinion of the commanding officer, to be investigated and can be adequately established without the holding of a court of inquiry.

(iv) If the circumstances of the accident are such that it appears that some third party might be held liable therefore.

(d) The commanding officer will detail an officer or investigate, obtain statements from witnesses, witness their signatures and report on the circumstances as laid down in sub paras (g) and (h). The officer will record all available details of the accident and make a complete report, which, together with the opinion of the commanding officer will take the place of the findings and recommendations of a court of inquiry. Paras 786 (a) and 792 (f) will be complied with so far as their provisions are applicable.

(e) A commanding officer may detail a warrant officer to carry out the investigation as laid down in this sub para where an airman below the rank of warrant officer is concerned unless the death or injury arises from a road or transport accident when the investigation will invariably be carried out by a commissioned officer.

(f) If under para 793 (a), personal injuries are dealt with by a court of inquiry convened to investigate other matters as well as injuries, the court will comply with sub paras (g) and (h) below.

(g) A court of inquiry or an investigating officer dealing with injuries will obtain evidence to show whether or not the injured person was on or off duty at the time he received the injury, and whether he was to blame, and will record an opinion on these points. Where, however, no evidence beyond that of the injured person himself is forthcoming, the fact will be stated in the proceedings and the court or investigating officer will not express, such an opinion, but in transmitting the proceedings the commanding officer will do so.

(h) When an officer/airman/flight cadet is injured in any way by or through the fault of, some other person or persons, it will be recorded in the proceedings of the court of inquiry whether the officer/airman/cadet intends to claim or has claimed compensation from such other person or persons. If the officer or airman does not propose to prefer a claim against the third party it would be open to the air officer preferring a claim should therefore be recorded. Corresponding information so as it is available, will be recorded if the inquiry is fatal.

(i) After the opinion of all higher authorities, including AOC-in-Command, has been recorded on the proceedings the court of inquiry/formal investigation, a copy of the proceedings will be sent to Air Headquarters for attachment to the service documents of the officer/airman/flight cadet concerned.”

57. The power to hold an investigation in cases of personal injuries or accidental deaths is vested with the Station Commander. While referring the matter, it was obligatory on his part to frame issues for adjudication of Court of Inquiry in the light of the conditions provided in clauses (b) and (c) supra of Regulation 796 and other conditions provided therein. We do not find enough material on record which may satisfy us that the Station Commander had applied his mind to

make a reference and accorded a finding in the light of Regulation 796.

58. Regulation 797 provides for preparation of inquest report and Regulation 798 deals with unnatural death or death under suspicious circumstances. For convenience, both Regulations 797 and 798 are reproduced below:

“797. Court of Inquest.

(a) In accordance with the provisions of section 174, Criminal Procedure Code, the responsibility for holding an inquest in cases of unnatural deaths, that is, death due to suicide, violence, accident or under suspicious circumstances devolves on the local civil authorities. Information regarding such cases of death of persons subject to the Air Force Act or any deaths within unit lines will, therefore, be given immediately on occurrence, in writing and conveyed by hand of an officer to the senior local civil police officer.

(b) If the civil police authorities do NOT intend sending the dead body for a post mortem examination and decide NOT to hold an inquest, the air force officer conveying the information of death will obtain a declaration in writing to that effect. A service court of inquest consisting of three officers, of which one must be a medical officer will then be convened under the orders of the station commander or alternatively the immediate formation commander. In case of death of service personnel occurring at a place outside India, not including the state of Jammu and Kashmir, unless the local law requires otherwise, it is not necessary to inform the local civil police authorities and the inquest may be held by the officer commanding the unit to which the deceased belonged. The cremation/funeral will take place only after concurrence of the officer and the medical member of the court of inquest has been obtained.

(c) Service courts of inquest will follow the procedure laid down in Rules 154 and 155 of the Indian Air Force Rules, 1969.

(d) A copy of the court of inquest proceedings will be forwarded to Air Headquarters through proper channel.

798. Unnatural death/death under suspicious circumstances. *Report of death of service personnel to next of kin should be in the following phraseology:-*

(a) When the death is due to natural causes, e.g. sickness-the person should be reported to have "died".

(b) When the death is due to "accident" or "enemy action" the term "killed" should be used.

(c) When the death is due to drowning, the phrase "died of drowning" should be used.

(d) When the cause of death is doubtful, the term "died" should be used with an indication that the cause of death is being investigated. This includes cases of "suspected suicide".

59. In the present case, the record does not show that after death of Capt Meenakshi, the provisions contained in Section 174 of Cr.P.C were complied with. The respondents have not pointed out that any report was sent to police station and inquest was prepared in accordance to Regulation 797 read with Section 174 Cr.P.C.

60. Our attention has not been drawn to any material on record to indicate that the procedure contained in Regulations for the Air Force was followed. No information was communicated by the Commanding Officer i.e. respondent No.9 to the parents of Capt Meenakshi. They received information from Capt Divya on telephone in the night of 24/25.12.2011, though it should have been done by the Commanding Officer himself under whose nose such incident had taken place. There is a gross negligence on the part of

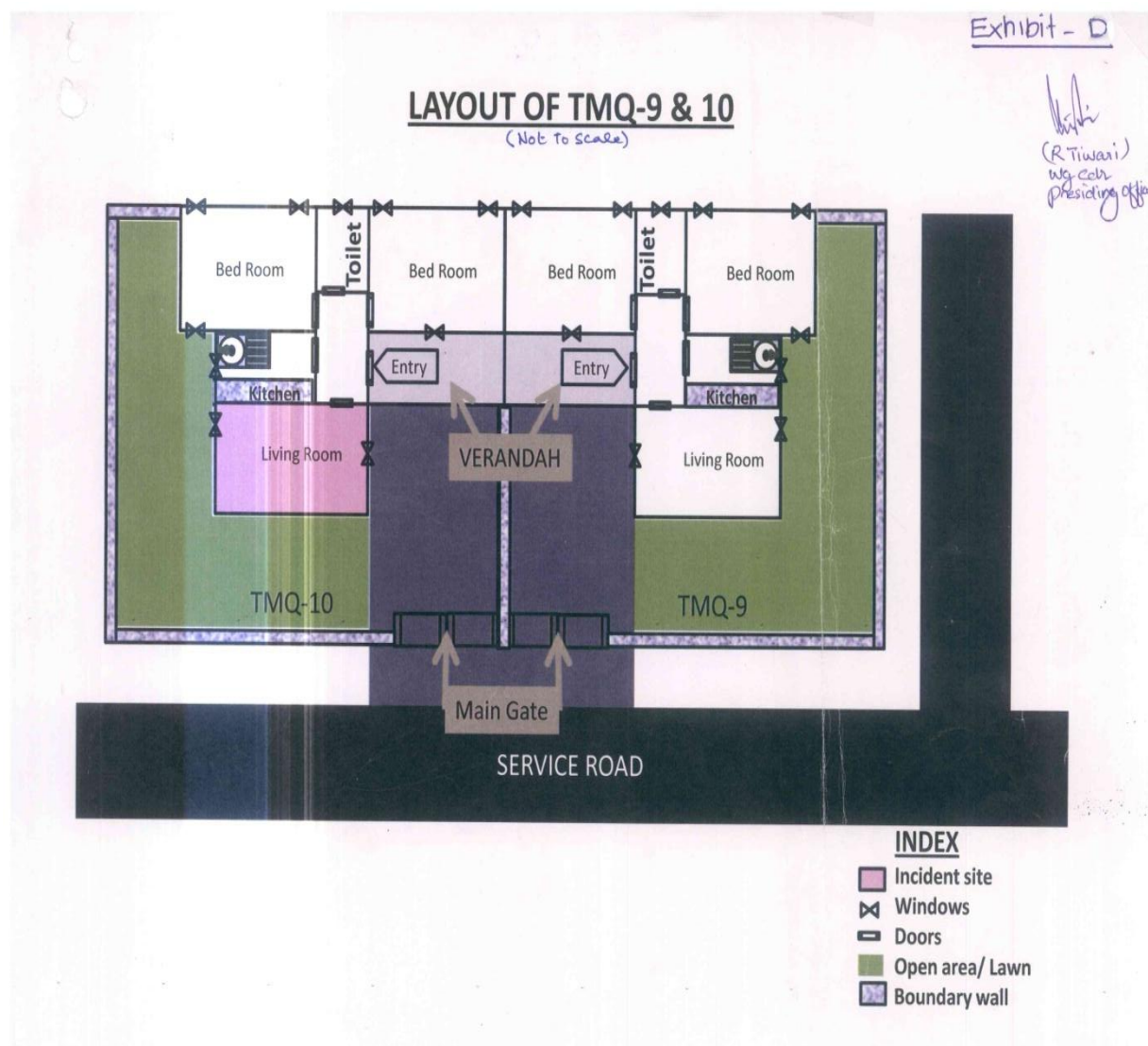
respondent No. 9 and other authorities on the station while dealing with the case of death of Capt Meenakshi.

61. Lack of communication by the Air Force authorities to the applicant in respect of the incident in question, non-preparation of inquest report and investigation without adhering to the provisions of Regulation 976 meant for personal injuries and accidental death are enough to establish that the provisions contained in Air Force Regulations and the Act were given a go-bye obviously with an intention to hush up the matter. In spite of there being a bounden duty of the Commanding Officer (respondent No. 9) to meet out the grievance raised by the mother of Capt Meenakshi in respect of residential accommodation, he did not give audience to her or her parents. It indicates his callous attitude towards his duty in redressing the grievance of his subordinates.

INCIDENT

62. The factual case set up by the respondents with regard to burn injuries caused to Capt Meenakshi is not believable even by a stretch of imagination. We feel that not only gross injustice has been done to the bereaved family but also the Commanding Officer (respondent No. 9) and his associates have acted in gross violation of Rules and Regulations of the Air Force while setting up a case to save their necks. TMQ-10, where Capt Meenakshi was shifted, is a two-room residence at ground floor. Adjoining house is TMQ-09. Both, TMQ-09 and TMQ-10 are separated by a boundary wall and

they have separate entry-gates (main gates) from outside. Their situation may be visualised by the following sketch:



63. From the statements of witnesses during Court of Inquiry, it is borne out that Capt Meenakshi while engulfed in fire had gone to witness No. 5 K.N.Gupta, AE residing in TMQ-09 for help. She knocked his door at about 11-40 p.m in the night. When witness No. 5 K.N.Gupta, AE saw outside from AC window, he noticed Capt Meenakshi fully in flames, knocking his door and shouting with full force, "Help me", but he did not open the door under some fear. He telephoned Mr Deepak Koshta at 0010 hrs and reported the matter to Guard Room. In reply to question No. 6 (supra), he stated that

when he saw Capt Meenakshi outside his quarter, flames were coming out from her body. With regard to intensity of fire, he stated that flames were rising up to approx one foot above her body and her entire body was surrounded by the flames. He also saw burning pieces falling from her body.

64. At the face of record, the statement of this witness cannot be believed by a man of common prudence. It is in the movie where we may see a ghost-rider who, in spite of fully ablaze with flames rising above his head, drives a motorcycle in the streets, but it is not possible in actual incident. If Capt Meenakshi was in such a situation as narrated by witness No. 5, it would not have been possible for her to go outside her residence and then entered into TMQ-09 and knocked the door asking for help from witness No. 5. Whether the main gate of TMQ-09 was open or locked and if locked, how she could open the gate in fully ablaze condition and knock the door for help and further when no reply was received from witness No. 5, how she could go back to her residence again in burning condition and stayed there till Capt Divya reached there, is not understandable. It also appears to be a far-fetched story that while sitting on the scooty of Capt Divya as pillion rider, Capt Meenakshi was very well talking and she narrated the entire incident to her.

65. Capt Divya stated that she received a call at 0015 hrs from Capt Meenakshi with regard to her physical condition. According to the call details filed as Exhibit-N to the counter affidavit dated 24.11.2015 by the respondents themselves, which appear to be a

part of Court of Inquiry, the last call made by Capt Meenakshi on 24.12.2011 was at 10-17 p.m. The call details (supra) of Capt Meenakshi from 15.12.2011 to 27.12.2011 are as under:

"Call details of Mobile No 9636742964 from 15 Dec 2011 to 27 Dec 2011

Calling No	Called No	Date	Time	Dur	Cell 1	Cell 2	Call Type	IMEI
9636742964 3.55531E+14	9261344482	23 Dec 11	14:38:47	19	30429898	30429898	Out	
9261344482 3.55531E+14	9636742964	23 Dec 11	17:07:36	106	30429898	30429898	IN	
9950626361 3.55531E+14	9636742964	23 Dec 11	9:19:45	89	30445142	30445142	IN	
9928926589 3.55531E+14	9636742964	24 Dec 11	10:32:21	42	30429898	30429898	IN	
9261344482 3.55531E+14	9636742964	24 Dec 11	17:57:37	522	30445142	30429898	IN	
7304675707 3.55531E+14	9636742964	24 Dec 11	21:20:41	0	30429898-		SMT	
9261344482 3.55531E+14	9636742964	24 Dec 11	15:26:29	735	30429898	30429898	IN	
1130677460 3.55531E+14	9636742964	24 Dec 11	12:34:08	141	30429898	30429898	IN	
9261344482 3.55531E+14"	9636742964	24 Dec 11	10:17:18	353	30429898	30429898	IN	

From the aforesaid facts on record, we feel that Capt Meenakshi had not rang to Capt Divya for help. It shows that the things were cooked up by commission of fraud at later stage by the officers of 15 AFH.

66. Apart from above, Witness No. 4 Sqn Ldr DK Boro, in his statement, has stated that Capt Meenakshi was screaming and had 90% mixed burn (superficial and deep) sparing only both legs. This itself indicates that the case set up by the respondents that the clothes of Capt Meenakshi caught fire from the burning heater kept on the ground, is not probable. Her whole body was charred, hands and fingers were shrunken but both the legs below knees were spared. This fact indicates that either something was poured from the head side of Capt Meenakshi or some scuffle took place

between Capt Meenakshi and some two or three persons took part in the incident inside her residence for some extraneous reasons. During Court of Inquiry, a questionnaire was sent to Capt Meenakshi at CH Pune where she was in coma. The medical opinion on record also reveals that right from 15 AFH at Jaisalmer (Rajasthan), Capt Meenakshi, on account of 90% burn injuries, was in coma, but the Court of Inquiry, in its deliberation, noted that the cause of fire was error of judgment of Capt Meenakshi. Her cloth (skirt) unknowingly came in contact with naked coil heater while trying to reach power switch for putting the heater off. The absence of burn injury below her knees, however, belies the prosecution story and raises an index finger on the case set up by the respondents.

67. To what extent, the respondents have gone to hush up the matter, may be noticed from the questionnaire prepared by the Court of Inquiry and answers of Capt Meenakshi received thereto from CH Pune. We reproduce the entire questionnaire and answers allegedly given by Capt Meenakshi, forming part of Court of Inquiry vide Exhibit-M, in its totality:

“QUESTIONNAIRE BY COURT OF INQUIRY
TO INQUIRE INTO THE CIRCUMSTANCES UNDER WHICH
NS 21695-F CAPT MEENAKSHI BHANDARI MNS OF 15 AFH
GOT DANGEROUSLY INJURED AT HER RESIDENCE T-10
(OFFICERS LIVING ACCOMMODATION AT AF STATION JAISALMER)

Q. What happened on midnight of 24 Dec 11 at your residence T-10 at AF Station Jaisalmer?

A. At midnight of 24 Dec 11, I was in my room at my residence T-10 at AF Station Jaisalmer. I was wearing a wrap-around skirt, T-shirt and nylon jacket and was watching television. I went to switch off the room

heater and suddenly my cotton wrap-around caught fire. I could not untie the wrap around and ran out of the room and called for help. I knocked on the door of T-9 but no one responded. I then dialled the last dialled number of my mobile, and contacted Capt Divya, who transported me to the hospital.

Q. How did fire take place at your residence?

A. My clothes caught fire from the room heater.

Q. Who were present at your residence when the incident took place?

A. Nobody.

Q. At what stage did you notice the fire and what action did you take to extinguish the fire?

A. Immediately when my clothes caught fire from the room heater, I threw my laptop to another side and noticed that the mat and table cloth were on fire. Then I rushed out of my room for help.

Q. Do you think someone else is responsible for the fire at your residence?

A. No.

<i>Left great toe print of Capt Meenakshi</i>	<i>Witness 1</i>	<i>Witness 2</i>
	<i>sd/- x x x</i>	<i>sd/- x x x</i>
	<i>LT COL S SUJATHA</i>	<i>N ROY</i>
	<i>BURNS MATRON</i>	<i>SURG CDR</i>
		<i>GD SPL SURGERY"</i>

68. From the questionnaire and answers allegedly given by Capt Meenakshi, as quoted above, indicate as to what extent the investigating authorities or the respondent No. 9 had gone to hush up the matter. The role of CH Pune is deprecated for the reason that on the one hand, in their own opinion, Capt Meenakshi was in coma and on the other, she is said to have explained the entire facts while giving reply to the questionnaire sent by Court of Inquiry. A perusal of aforesaid questionnaire also shows that it contains the impression

of left great toe (foot) of Capt Meenakshi. The reason explained by the respondents is that the upper part of the body of Capt Meenakshi including her hands and fingers were not in a position that thumb impression could be obtained. Some soul came into her body during coma when she made a statement and then went back resulting in ultimate death of Capt Meenakshi. Horrible! It beats our heart to see the manner in which CH Pune seems to have helped respondent No. 9 in preparing the answers to the questionnaire sent by Court of Inquiry. The conduct of the officers of CH Pune and the respondent No. 9, who was present in Pune, requires in-depth enquiry. It is admitted by respondent No. 9 that he was present in Pune and had gone there to meet the bereaved family but there is not even a whisper on record to indicate that he met the bereaved family in CH Pune.

DEATH: ACCIDENTAL OR HOMICIDE

69. The applicant raises serious doubt over the case set up by the respondents based on the statement of Capt Divya MNS and answers to the questionnaire alleged to have been given by Capt Meenakshi during coma while on death bed. The respondents took a stand that it is a case of accidental death. We have held supra that it was not possible for Capt Meenakshi to give reply to the questionnaire sent by Court of Inquiry while lying in the hospital in coma and waiting liberation of her soul from the charred body. The whole case of the respondents is based on the statement of Capt

Divya MNS. The relevant portion of the statement of Capt Divya (Witness No. 1) is reproduced as under:

“At round 0015 hrs, I received a call from Capt Meenakshi Bhandari on attending which I was unable to hear anything clearly but only a sobbing sound saying “Divya Miss”. I knew she was in distress and immediately rushed to her house on my two wheeler. When I reached there I saw her standing without her clothes at the door, her body had turned black and her hair was still burning. I rushed inside the room, grabbed a blanket, doused the fire from her hair, covered her with the same blanket and tried to make her sit on the scooty. As she had gone stiff, she could not do that. I then lifted her up, made her sit in a slanting way, tied one end of the blanket with the back handle of the vehicle, tied the other end with the pocket of my jacket and made her lean on me. I then took her to the hospital. On reaching 15 AFH I took her to ICU, made her lie down, covered her with a bed sheet, and went to the DMA room to call him. He (Sgt Pathak) in turn called DMO and management began.

During my encounter and throughout the way to 15 AFH, when I asked about the incident, she quoted as, follows. She was working on her laptop in her drawing room with a coil heater near her chair. When she felt sleepy, she got up to switch off the TV and Laptop. She unknowingly crossed the heater to reach the switch. At this time, the skirt (wrap around) she was wearing came in contact with the heater and caught fire. As it was of a synthetic material, the fire spread very rapidly. She tried to open the knot but could not. She ran out for help with the skirt on fire to the neighbour who stays in T9, who did not open the door. She came back to the room and tried

*pouring water on herself but she could not lift the bucket.
Then she called me from her mobile but could not speak.”*

70. We have gone through the statement of witness No. 5, the neighbour of Capt Meenakshi, Mr. K.N.Gupta. According to him, he had seen Capt Meenakshi full with flames while coming to his quarter. How Capt Meenakshi came out of her residence, jumped from the main gate and then went to the quarter of Mr. K.N.Gupta and knocked his door, more so when her both hands were burnt, fingers were crippled and flames were rising upto approximately one foot above her body. This statement of witness No. 5, at the face of record, is not only improbable but also seems to have been cooked up during Court of Inquiry.

71. Coming to the statement of Capt Divya, witness No. 1 (supra), she stated that while taking Capt Meenakshi to hospital on scooty, the lowest rung of scooters or motorcycles, she very well explained how the incident had taken place. She informed that she was working on her laptop in her drawing room with a coil heater near her chair. When she felt sleepy, she got up to switch off the TV and Laptop. She unknowingly crossed the heater to reach the switch. At this time, the skirt she was wearing came in contact with the heater and caught fire. As it was of a synthetic material, the fire spread very rapidly. How could a lady aged about 23 years engulfed in fire with 90% burn injuries give a statement, that too wrapped in a blanket and as pillion rider of scooty, is horrible to think. To what extent now the society can go to cross the truth? We feel that in no

way even a fraction of the statement given by Capt Divya or the questionnaire prepared by the Court of Inquiry deserves to be believed.

72. We are constraint to observe that this is a case where right from the very beginning, the things were tried to be fabricated to declare the incident as an accident. A lady with 90% burn injuries (both superficial and skin deep) had gone to the hospital speaking to her colleague about the incident, though the doctors in the hospital noted that she was unconscious and airlifted to Jodhpur and then to Pune in early morning the next day.

73. According to Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, *"the estimation of burnt surface area in an adult is usually worked out by the rule of nines: nine percent for head and each arm, eighteen percent front or back of trunk, nine percent for front or back of each leg, and one percent for perineum, thus making a total of one hundred percent for the body. Roughly, one percent of surface burn is equivalent to the area covered by the palm of the individual. In children, the estimation of burnt surface is worked out by the use of Lund and Browder chart. If the burnt area is more than 15 per cent in an adult and 10 per cent in a child, the loss of circulating blood volume must be replaced or irreversible shock is likely to set in.*

Effects of burns: *All three stages may be found together. Scarring is usually less after scalds than from burns. Keloid scarring with destruction of tissues and considerable deformity occurs in*

corrosive burns. Curling's ulcer is an occasional sequel to severe burns. It is seen as a sharply punched out mucosal defect in the stomach and/or duodenum.

The effects of burning mainly depend upon (1) temperature and duration of exposure (2) extent and position of burns, and (3) age of victim.

Temperature and duration of exposure: The severity of burns, whether of first degree, second degree, or third degree depends on the degree of heat and the duration of exposure. The higher the temperature the more severe are the burns. The lowest temperature that would cause burns is 44⁰C if sustained long enough (about five hours). This is manifested by lawsuits concerning unconscious patients burned by forgotten hot water bottles. Only three seconds are needed if the object is at 60⁰C. It takes only about a second or less for a partial thickness burn at 63⁰C and about a second or less for a full thickness burn at 71⁰C. The relationship between temperature and time is non-linear and as temperature rises severe burning can occur in fraction of a second.

Extent and Position: The surface area burnt is more important than the degree of burn in assessing prognosis of a given case. As for example, a first degree burn over a wide area is more dangerous than a third degree burn over a limited area. Destruction of one third of skin area is usually fatal though instances are known when victims with 80 per cent burns have survived with skilled treatment when appropriate facilities are available.

The Burn Index was devised by the Brook Army Medical Center Burn Unit of the US Army. It combines depth and area to gain insight into prognosis and effectiveness of treatment. In this system, $\frac{1}{2}$ point is used for each per cent area of second degree and 1 point for third degree burns. As per their experience, at about 45 points, the mortality rate is 50 per cent. While this may have changed now in view of the improvement in treatment, it is still a good guide to determine the relative severity of burns and enables relative prognosis to be estimated in conjunction with age.

Burns on the head, neck, trunk, and genitals are said to be more dangerous than on other parts of the body, on account of possible involvement of vital structure.

Age: Infants, young children, and the elderly are particularly vulnerable to initial shock and subsequent complications.

Age of a burn: Redness occurs immediately after a burn, vesication within two to three hours, and purulent inflammation may be found within 36 to 72 hours. Superficial sloughs of third degree burns are thrown off in about a week and deeper sloughs in about a fortnight. After this period, granulation tissue begins to cover the burnt surface, and the final result is formation of a scar.

Cause of death: Death may occur from primary neurogenic shock instantaneously from fear or pain, or within 24 to 48 hours from severe pain caused by extensive burns, or from injury to a vital organ from burning, or from oligoemic shock. If victim survives, this stage merges rapidly into stage of secondary shock due to exudation

of serum from burnt area and consequent depletion of blood volume. Apart from actual burning, death may occur from asphyxia (suffocation) due to inhalation of smoke containing carbon dioxide, carbon monoxide, and other products of combustion which may be poisonous (in recent years, cyanide intoxication has been recognized as important, especially where plastics and paints are burning), or accidental injuries from falling structures while trying to escape from a burning house, or from fat embolism. It has been postulated that death may occur even without the inhalation of smoke due to rapid consumption of oxygen by intense fire. This is not correct. If there is no oxygen, the fire would be extinguished.

Death may be delayed for some days and then it may be due to acute tubular necrosis owing to general toxæmia arising from destruction of tissue by burning, or due to inflammation, such as meningitis or peritonitis. Thereafter, the chief danger to life is the occurrence of sepsis in burned areas, or intercurrent disease, especially of the respiratory system.

Complications and exhaustion are responsible for delayed deaths. Curling's ulcer may develop in one or two weeks after severe burning. Tetanus, gangrene, and erysipelas are other complications. Gross hypoproteinaemia producing oedema, ascites, pleural and pericardial effusions is seen in some cases.

Fatal period: *Death from shock occurs within 1 to 2 days in over 50% cases. Toxæmia persists up to 3 to 4 days and accounts for deaths occurring from 4 to 5 days or longer. Usually, most*

fatalities occur within the first week. In suppurative cases, death may occur after 5 to 6 weeks or longer.”

74. Keeping in view the medical jurisprudence (supra), when a victim has got 80% burn, it shall be fatal. However, when the victim has got 90% burn injuries, there seems to be no chance of survival. How a person, that too a lady, bearing the pain of such 90% per injuries, can move as a pillion rider and give a statement in the hospital?

75. In Parikh’s Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, with regard to homicidal burning, the following observation has been made:

“Homicidal burning is rare but cases are recorded where fire, kerosene, petrol, hot metals, and corrosive substances have been used with criminal intent. Homicidal cases are fairly common in India mainly due to suspected infidelity of the woman or inadequate dowry. Among adult females, burns are produced usually on the pudenda as a punishment for adultery. The body may then be burnt to conceal the crime.”

76. With regard to electric burns, the medical jurisprudence believes as under:

“There are three kinds of electric burns, viz (1) contact burns (2) spark burns, and (3) flash burns, depending on the nature of contact and strength of the current. All of them have one feature in common. Their depth is greater than the surface appearance would suggest, and severe sloughing of tissues may occur later. In addition, burnt areas may have non-singed hair

suggesting that the heat effect was from an internal and not an external source, due to conversion of electricity into heat within the tissues.

***A contact burn** is due to close contact with an electrically live object with domestic voltage. The damage varies from a small and superficial injury to charring depending upon the time the contact is maintained. A characteristic injury is frequently present at the point of entry and exit. The commonest lesion at the point of entry is a raised blister containing either gas or a little fluid. The lesion is often seen on the pads of fingers or thumb. At the point of exit the tissues are frequently split in the form of punctured or lacerated wounds.”*

According to Parikh’s medical jurisprudence, ordinarily death due to injury caused by domestic electrical appliances is not possible.

77. We have weighed the burn injuries of Capt Meenakshi from the point of view of electrocution as well as burn caused due to fire caught by her clothes from the electrical appliance i.e. heater, but on both points, according to medical jurisprudence, we find that the physical condition of Capt Meenakshi does not reconcile with the injuries caused by accidental death. On combined reading of Medical Jurisprudence of Modi and Parikh, *prima facie* we are satisfied that the death of Capt Meenakshi is not accidental. As observed above, she was set ablaze from top by pouring some material which went to the bottom upto knee, and that is why the lower portion of her body i.e. legs were saved. More we apply our mind, more we feel that something very serious has happened

wherein involvement of some third person cannot be ruled out. The scene of room indicates that some scuffle or fight had taken place before Capt Meenakshi was set to fire. Learned counsel for the applicant has rightly relied upon the case of **Charanjit Kaur versus Union of India and others**, reported in *AIR 1994 SC 1491*, wherein the Hon'ble Apex Court observed as under:

“We are pained at the utterly irresponsible conduct of the authorities in the present case right from the inception. We see a good deal of substance in the allegation of the petitioner that her husband met with his death in mysterious circumstances. It is surprising that when the officer was not in a condition to move on account of his ailment, and when on June 16, 1978 his condition was considered so delicate that even his wife and children were permitted to see him only after a great deal of persuasion, and when he was all the while accompanied by the specialist doctor, he was allowed to move on his own and go for his private business to the cook house, if the version of the respondent-authorities is to be believed. It is also difficult to believe that when he was being airlifted at his own request, he had refused to board the plane and instead had left for his said alleged private business. All that thereafter was found was his charred body with 98% burns. No inquiry whatsoever seems to have been made and if made, its results being kept a secret. That such an incident should have occurred in the presence of the responsible Army officers and should go un-investigated and in fact completely ignored is all the more baffling. There is a good deal in this case for which the authorities have to answer. This is apart from the fact that till this day, the case has been handled with culpable negligence and cynical indifference. This is

a matter which requires investigation at the highest level. We, therefore, desire that this matter be personally looked into by the Chief of the Army Staff.”

78. Since it is a death in mysterious circumstances, it should have been referred to police or some skilled investigating agency immediately after the incident for homicidal investigation. The police seems to have completed only its formality obviously because of the involvement of Indian Air Force. The Court of Inquiry has gone even one step ahead to record the attributability of accidental death instead of making efforts to find out the cause of death on medical point of view.

THE ROLE OF COMMANDING OFFICER
(RESPONDENT NO.9)

79. We have already held that it was the Commanding Officer who had to look after the grievances of his subordinates. It was for the Station Commander, under the situation in question, to form an opinion on the basis of Court of Inquiry in view of Para 520 of the DSR. The Air Force authorities have not done anything to proceed with the investigation in accordance to Regulations 79 and 80. Why no orders were passed by the concerned Air Force authorities in pursuance to Para 520 of the DSR, is not understandable.

80. It is the specific case of respondent No. 9, the Commanding Officer, 15 AFH that he was not present in the Unit and was on leave from 23.12.2011 to 30.12.2011 and Sqn Ldr DK Boro was the Officiating Commanding Officer, but the things speak otherwise. The supplementary affidavit filed by the respondents dated 18.05.2017 at

the face of record shows that Sqn Ldr DK Boro, Adjutant 15 AFH had submitted an application on 25.12.2011 to SHO, P.S.Kotwali, Jaisalmer (Rajasthan) for getting an FIR registered in respect of the incident, wherein his designation has been shown as Adjutant and not as Officiating Commanding Officer. This application was received by the police station on 25.12.2011 at 12-30 p.m. In this application, the seal used by DK Boro is of Sqn Ldr Adjt 15 AFH. This material fact would indicate that even on 25.12.2011, the respondent No. 9 was the Commanding Officer and Sqn Ldr DK Boro was not the officiating Commanding Officer.

81. The police in G.D recorded the incident on 25.12.2011 at 12-30 p.m on the basis of application/report submitted by Sqn Ldr DK Boro, Adjutant of the Unit. Needless to say that in such a situation, it was the Adjutant who swung into action and submitted a report to the police.

82. There is one other important material on record, which, at the face of record, indicates that the respondent No. 9 had not gone on leave. Alongwith the affidavit dated 18.05.2017 (supra), copy of a handwritten letter of the S.O of P.S.Kotwali, Jaisalmer dated 28.12.2011 addressed to the Commanding Officer, 15 Air Force Hospital, Jaisalmer has been filed, by means of which the police had asked to provide a copy of injury report. On this letter, the note of the staff of the hospital puts a seal to our observation that the respondent No. 9 was very well present in the Unit and was not on leave. To quote:

“Sir,

One Photostat copy of MLC handed over to Sub Insp Durga Ram with the concurrence of Sqn Ldr DK Boro, Med Specialist on 28.12.11.”

83. The hospital note (supra) indicates that the staff addressed to CO, respondent No. 9 that with the concurrence of Sqn Ldr DK Boro, the second in command, one Photostat copy of the injury report has been handed over to the police.

84. The police relied upon the communication of the Unit and vide its letter dated 02.04.2012 closed the chapter with the finding that it is not a cognizable case and death is caused by 90% accidental burn injuries. On investigation, no cognizable offence was found by the police. It is unfortunate that the police has recorded the same finding as recorded by Court of Inquiry and without pressing for post-mortem report, relied upon Tehrir Panchnama, challan, MLC report, death certificate, DFMT report, etc, as is evident from the letter sent by the police to SDM, Jaisalmer on record. No forensic investigation was done. There is no discussion with regard to post-mortem examination and its report. Things have been done mechanically, obviously for extraneous reasons. **It is stated by the respondent No. 9 that he had gone to Pune in sympathy with the bereaved family, but from none of the records it is borne out that he had met the bereaved family.** This shows the suspicious conduct of respondent No. 9 and an inference may be drawn that the medical opinion given by the hospital is not trustworthy.

85. The respondent No. 9 had not given any heed to the request of the mother of Capt Meenakshi, who was shifted from Mess to TMQ-10 though under the Air Force Act, Rules and Regulations. He was personally accountable to the welfare of the Unit and could have addressed the grievance of Capt Meenakshi by taking up the case with the Station Commander 41 Wg, but he failed to discharge his duty honestly. From the material on record, we feel that antedated records have been prepared with regard to leave of respondent No. 9, who has not discharged his duty expected of a Commanding Officer. The respondent No. 9 has set up a case that on 23.12.2011 he had gone to Pune to meet the bereaved family but that was not done. At every stage, he tried to conceal the facts. Accordingly, we hold that the respondent No. 9 was very well present in the Unit and was not on leave from 23.12.2011 to 30.12.2011. It is also evident from the material on record that Sqn Ldr DK Boro never used official stamp of Commanding Officer and kept on working as Sqn Ldr Adjutant.

86. The conduct of respondent No. 9 as Commanding Officer of the Unit is reprehensible and not upto the mark. It raises a reasonable doubt to infer that Capt Meenakshi died because of some untoward incident which requires in-depth enquiry by some independent investigating agency with forensic experts so that the departed soul of a young lady officer of Indian Armed Force may rest in peace.

87. *Prima facie*, we also feel that some second or third person may have also been present at the scene of occurrence when Capt Meenakshi became a towering inferno. It is well settled proposition of law that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to that at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusion alterius*", meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. (Vide: **Prabha Shankar Dubey versus State of Madhya Pradesh**, AIR 2004 SC 486; **Ram Phal Kundu versus Kamal Sharma**, AIR 2004 SC 1657 and **Indian Bank's Association versus Devkala Consultancy Service**, AIR 2004 SC 2615.)

88. Our anxiety is to find out the truth behind the death of young lady officer Capt Meenakshi. We feel that on account of arbitrary exercise of power and attempt to conceal the truth and hush up the matter (supra), it is a case of failure of justice, hence it was our endeavour to take into account different aspects of the case from day one to the end of life of Capt Meenakshi. The court must endeavour to find the truth. There would be 'failure of justice' not

only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasized to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court. (Vide: **Nageshwar Sh. Krishna Ghobe v. State of Maharashtra**, AIR 1973 SC 165; **Shamnsaheb M. Multtani v. State of Marnataka**, AIR 2001 SC 921; **State by Police Inspector v. T. Venkatesh Murthy**, AIR 2004 SC 5117; **Rafiq Ahmed v. State of Uttar Pradesh**, AIR 2011 SC; **Rattiram v. State of Madhya Pradesh through Inspector of Police**, AIR 2012 SC 1485; **Bhimanna v. State of Karnataka**, AIR 2012 SC; **Darbara Singh v. State of Punjab**, AIR 2013 SC 840 and **Union of India v. Ex-GNR Ajeet Singh**, (2013) 4 SCC 186).

89. In **Shamm Saheb M. Multtani v. State of Karnataka**, AIR 2001 SC 921, the Apex Court explained the meaning of the phrase

'failure of justice' observing that the superior court must examine whether the issue raised regarding failure of justice is really a failure of justice or whether it is only a camouflage. The court must further examine whether the said aspect is of such a nature, that non-explanation of it has contributed to penalizing an individual, and if the same is true then the court may say, that since he was not given an opportunity to explain such aspect, there was 'failure of justice' on account of non compliance with the principles of natural justice. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any situation of a case.

FINDINGS

90. In view of what has been discussed above, our findings in the case are as under:

(i) *Prima facie*, the death of Capt Meenakshi on account of burn injuries does not seem to be accidental. The absence of burn injuries below knees and charring on whole body from head to knees shows that perhaps Capt Meenakshi was set to fire after pouring some inflammable material from upper side of the body in the presence of some second or third person.

(ii) Statement given by Witness No. 5 Mr. K.N.Gupta is not only improbable, but the same appears to be tutored or concocted. Capt Meenakshi engulfed with flames rising approximately one foot high over her head could not have gone outside her residence and opened the main gate, entered the residence TMQ-10 of Mr.

K.N.Gupta and knocked the door and thereafter having no response, would have gone to her residence from the main gate and kept on standing in verandah till witness No. 1 Capt Divya arrived.

(iii) Statement of witness No. 1 Capt Divya is also improbable. Capt Meenakshi, with 90% burn injuries and sitting on pillion, could not have been in a position to give any statement. It is noteworthy that the Medical Officer found her in unconscious state/coma at the military hospital. In such a state, the victim could not narrate the entire incident on way to hospital to Capt Divya.

(iv) *Prima facie*, we feel that the answers alleged to have been given by Capt Meenakshi to the questionnaire sent by Court of Inquiry, that too in the state of coma with crippled hands, seem to have been manufactured in connivance with the Military Hospital doctors on the persuasion of respondent No. 9, who was admittedly present in Pune. It is further strange that having charred body with crippled hands because of burn injuries, Capt Meenakshi had given answers to the questionnaire (supra) and instead of thumb impression, the impression of left great toe was taken on paper.

(v) The respondent No. 9, Commanding Officer *prima facie* seems to have fabricated the documents to create his defence of *ali bi* that he was on leave from 23.12.2011 to 30.11.2011. From the noting of Sgt of the hospital and information communicated to respondent No. 9 at the face of record indicate that the respondent No. 9 was not on leave but was on duty even on 25.12.2011 when supply of injury

report to the police was made in concurrence with Witness No. 4 Sqn Ldr DK Boro. In none of the documents Sqn Ldr DK Boro, Adjutant has been recorded as Officiating Commanding Officer though it has been claimed by respondent No. 9 that he was on leave from 23.12.2011 to 30.12.2011 and joined duty on 31.12.2011.

(vi) The entire story set up by the respondents appears to be cooked up to save the neck of respondent No. 9. The mysterious death of Capt Meenakshi has been hushed up to conceal their failure in protecting the lady officer Capt Meenakshi.

(vii) The manner in which Capt Meenakshi had been transferred from Mess to TMQ-10 in gross violation of Air Force Act, Rules and Regulations (supra), is not understandable. The conduct of respondent No. 9 in redressing the grievance of Capt Meenakshi is condemnable. Inference may be drawn that something wrong was done by respondent No. 9 to her and on protest, she was persecuted followed by ultimate death by burn injuries.

(viii) In gross violation of Air Force instructions, the family of Capt Meenakshi was not informed of the incident in the night of 24/25.12.2011; rather an unofficial information was communicated to the applicant by Capt Divya, who later on appears to have been empowered and tutored to give a false statement as witness No. 1 in Court of Inquiry.

(ix) Keeping in view the hierarchy of system, the statements of some other witnesses seem to have been taken after tutoring them to hush up the matter.

(x) The Court of Inquiry has left out important areas of investigation and appears to be a farce. Its findings are not trustworthy.

(xi) It being a case of mysterious death, the respondents seem have committed substantial illegalities by not proceeding in the matter in accordance to the observations made by the Apex Court in the case of **Charanjit Kaur (supra)**.

EXEMPLARY COSTS

91. As observed above, it is a case of failure of justice where members of bereaved family are struggling to unearth the truth with regard to premature death of their young child because of burn injuries. The entire inquiry at different stages was done in gross violations of the provisions of Air Force Act, Rules and Regulations. The treatment given to the family of late Capt Meenakshi under the command of respondent No. 9 is disgraceful. Instead of providing them fair treatment, they have been forced to enter into this litigation to seek justice. This OA, therefore, deserves to be allowed with **Exemplary Costs**.

92. The Hon'ble Supreme Court, in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249,

has given emphasis to compensate the litigants, who have been forced to enter into unnecessary litigation. This view has been fortified by Hon'ble Supreme Court in the case of ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others***, (2012) 6 SCC 430. In the case of ***A. Shanmugam*** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India***, (2011) 8 SCC 161;
2. ***Ram Krishna Verma V. State of U.P.***, (1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325;
5. ***Padmawati V. Harijan Sewak Sangh***, (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.***, (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505;
8. ***Ramrameshwari Devi and others*** (supra).

93. As is evident from above, the question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and fair manner in accordance to law. The case of

Ramrameshwari Devi and others (supra) rules that it the party who is litigating and is to be compensated.

94. Sorrow and pain owing to inferno suffered by deceased Capt Meenakshi and the mental pain and agony the bereaved family had faced on sad demise of their beloved daughter, may be expressed from *Odyssey*. To quote:

*“Poor souls, what mischief’s on you? Night is wrapt
About your heads and faces, down to your feet-
There is a blaze of wailing, cheeks bedabbled-
The porch is full, the hall is full of spectres,
Hyrrying to hell and darkness; and the sun
Put out in heaven, a soul mist covers all.”*

94. Accordingly, the **OA is allowed**. The findings of Court of Inquiry dated 09.03.2012 (Annexure A/11) as well as the impugned order dated 08.09.2012 passed by the respondent No. 10 are set aside with consequential benefits. The respondents are directed to investigate the death of Capt Meenakshi afresh and punish the guilty. It shall be appropriate for the respondent i.e. Ministry of Defence, Government of India to refer the matter for investigation of the present case by an independent investigating agency so that truth may come out and departed soul of young lady officer Capt Meenakshi may rest in peace. We make it open to the Indian Air Force to proceed afresh in accordance to law to investigate into the matter by a High Power Committee.

We further declare the death of Capt Meenakshi Bhandari as being attributable to military service and direct the respondents to

provide liberalised family pension, gratuity, ex-gratia grant and other benefits to which the applicant is entitled to, in accordance with pension Regulations 2008 and other rules and regulations of the Indian Air force expeditiously, say, within a period of four months from today.

Cost is quantified to rupees 50 lacs, which shall be deposited by the respondents within four months in the Registry of this Tribunal and the same shall be released in favour of the applicant through cheque as soon as it is received from the respondents.

Let a copy of the present order be sent to the Secretary of Defence, Government of India as well as to the Chief of Air Staff for appropriate action and compliance within a period of four months.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated :Oct 3, 2017
LN/-