

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

T.A.No.01 of 2013

Friday, the 04th day of October, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

NR 18050N,
Army Captain Mrs. Latha Sharma,
W/o. Doctor P.C. Kakkar, aged 32 years,
Occupation: Military Officer,
R/o.219, Gymkhana Road,
Secunderabad-500 015. A.P.

... Applicant

By Party in person

Vs.

1. The General Officer Commanding (GOC),
Hq. ATNKK & G Area, Islands Grounds,
Madras-600 009.
2. The Presiding Officer, Staff Court of
Inquiry, MCEME, Trimalgiri,
Secunderabad-15.
3. Commander, Hq. Andhra Sub Area,
Secunderabad-500 015.
4. Commandant, Military Hospital,
Secunderabad-500 015.
5. Registrar/OC TPS, Military Hospital,
Secunderabad-15.
6. Superintendent of Police, Ranga Reddi District,
Hyderabad-500 004. A.P.
7. Union of India, represented by its
Secretary, Ministry of Defence,
New Delhi.

8. Maj General R.K. Dhawan, Presiding Officer,
Staff Court of Enquiry, MCEME, Trimalgiri,
Secunderabad-500 015.
9. Brig. R. Loganathan, Commander, Hq.
Andhra Sub-Area,
Secunderabad-15.
10. Brig, P.S. Choudhury, Commandant,
Military Hospital,
Secunderabad-500 015.
11. Lt. Col. Niraj Pant, Registrar/OC Tps,
Military Hospital,
Secunderabad-15.
12. Sambasiva Rao, Superintendent of Police,
RangaReddi District,
Hyderabad-500004-A.P.
13. The Chief of Army Staff,
New Delhi.

... Respondents

By Mr. B. Shanthakumar, SPC
and Mr. V. Balasubramanian, CGSC
for Respondents 1 to 5, 7 to 11 & 13.

No appearance for Respondents 6 & 12

Mr. V.T. Gopalan, Senior Advocate/Amicus Curiae

ORDER

[Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiyah,
Member(Judicial)]

1. This application was transferred from the file of Hon'ble High Court of Judicature of Andhra Pradesh at Hyderabad in W.P.No.6746 of 1993 and was taken on file by this Tribunal and re-numbered as T.A.No.01 of 2013.

2. The Writ Petition in W.P.No.6746 of 1993 was originally filed by the applicant for issuing a Writ of Mandamus or any other appropriate Writ or directions or order declaring the proceedings under the Court of Inquiry which is constituted vide letter No.213682/48/ASA/A2 dated 8.2.1993 of General Officer Commanding (GOC), Madras-9, as null and void; to direct the respondents to pay all the salaries, emoluments, consequential to the service benefits to the petitioner with effect from 1.10.1996 and in future and to pay compensation for violation of the constitutional rights of the petitioner and also to pass such other and necessary reliefs in the circumstances of the case.

3. The factual matrix of the applicant's case as stated in the Affidavit, Additional Affidavit and pleadings would be as follows :-

The applicant was a Class-I Officer in the rank of Captain in the Indian Army and was commissioned as Officer on 28.12.1983. She had worked with distinction and good accomplishments in Bareilly, Visakhapatnam Roorkee, and Secunderabad Military Hospitals. She was posted on compassionate grounds from Military Hospital, Roorkee, to Military Hospital, Secunderabad in June, 1992 suffering denial of substantial perks and benefits. She married in the year 1989 and her husband was a Doctor and lived with two infant sons at the Government accommodation since June, 1992. During August, 1989, her matrimonial home was attacked by

antisocial elements in Saroor Nagar, Ranga Reddi District in Hyderabad, resulting in arson, dacoity, looting, theft, assault in connivance with the Police officials since they bore a grudge and revengeful attitude against the applicant and her husband, as strictures were passed by Hon'ble High Court of Judicature, Andhra Pradesh, while allowing a Writ Petition in favour of her husband in W.P.No.10875 of 1985 and subsequent Suit for heavy damages and perpetual injunctions were ordered in O.S.No.290 of 1985 by the Principal Sub-ordinate Judge, Ranga Reddy District, Hyderabad. The Ranga Reddy District Police foisted about 21 cases against the applicant and her husband and all the foisted cases were dropped during the month of September, 1992. The applicant happened to be witness to a custodial gang rape, which happened on a Gandhi Jayanthi day on October 2, 1992, against one Lt. Miss Sumithra Rathi, and tampering of evidence by the respondents 4 and 5 in the Military Hospital. The applicant sought for her protection against the respondents 3 to 6. However, it culminated into a murderous assault against the applicant and her husband on 27.1.1993. The 6th respondent and his subordinates conspired and conducted raids on the applicant's residence. Under the guise of raids, the applicant was insulted and her modesty was outraged with the malafide intentions of respondents 2 to 5 on 15th, 16th and 17th March, 1993. Thus they have committed offences along with 6th respondent under I.P.C., under Army Act Sections 317 to 319 and the Official Secrets Act, 1923. On her complaint to General Officer Commanding (GOC), Madras, about the crimes against women, a Staff Court

of Inquiry was ordered by the 1st respondent to investigate the matters reported in the complaint. The Staff Court of Inquiry started functioning from 9.2.1993 and the applicant raised objections and requested for copies of documents. It was confirmed that the Staff Court of Inquiry was constituted on the complaint of the applicant. The said Staff Court of Inquiry was not conducted in camera and, therefore, the applicant did not want to participate in the Court of Inquiry proceedings unless they are held in-camera proceedings. The documents as required in the two letters of the applicant were not furnished to the applicant which is in violation of principles of natural justice and the woman's right under Army Rules, Section-179 & 180, and the Constitution of India. The Court of Inquiry assembled after over-ruling the objections of the applicant and she wanted the documents and reply to her two letters, but a reply was given that the letters were forwarded to the 1st respondent for urgent instructions and necessary action. The petitioner was forced and coerced to participate in the Court of Inquiry and to give statements under threat of being taken disciplinary actions against her. When the copies of proceedings and documents were asked for by the applicant under Rule-180/184(2) of Army Rules, 1954, along with replies to her two letters dated 9.2.1993 and 18.2.1993, it was sent to convening authority GOC for instructions. However, no copies of proceedings/documents have been provided to the applicant and she was kept in dark. It is a clear violation of Rule-180 and 184(2) of Army Rules, 1954. Apart from that, the Presiding Officer violated

Army Rule-179 with malafide intention. The witnesses and the applicant were threatened by the respondents 2 to 5 and 6 with dire consequences. The witnesses were not called as per the lists submitted and thus Rule-180 of Army Rules, 1954 has been flouted, which resulted in the Court of Inquiry proceedings null and void. The violation of Rule-180 of Army Rules in the Court of Inquiry proceedings would clearly attract the dictum laid down by Hon'ble Supreme court in Prithipal Singh Vs. Union of India. The convening order of Court of Inquiry was changed and tampered illegally twice by the convening authority, the respondents 1 and 2, which would vitiate the entire proceedings. A Letter No.Secret/Immediate/39/SB/14/RR/93 dated 26.2.1993, with defamatory particulars was obtained illegally from the S.P. Ranga Reddi District and was illegally introduced in the Court of Inquiry proceedings with malafide intention by the respondents. The alleged secret document was produced for indecent purpose and it has no relevance. The said letter was produced by the 4th respondent as if received by him fraudulently in criminal conspiracy with respondents 2, 3 and 6 to tarnish the character or military reputation of the applicant. The admission of the said letter into the records of Court of Inquiry would violate Rule-180 of Army Rules, 1954. The delinquent officers who are highly influential, rapists, molesters, assaulters and accused in innumerable crimes against women officers and others in custody were not attached out of the units, but were allowed to threaten, harass the applicant, witnesses and to tamper evidence by harassing the innocent family members. Per contra, the applicant was

issued with illegal attachment order which is clearly a vindictive, punitive and malafide action. The respondents 1 to 5 have illegally stopped the salary of the applicant from the month of February, 1993, which is an offence under the Army Act Section-61. The respondents proceeded with the inquiry in an illegal and arbitrary manner without giving any opportunity to the applicant and her witnesses. The proceedings were in hasty manner and if it allowed to be proceeded, the accused person will have all the chances of escaping from the heinous offences committed by them to the prejudice of the applicant's case. The inquiry conducted has to be set aside as it was repeatedly vitiated, illegally opposed to principles of natural justice. The applicant, therefore, prayed for declaring the proceedings under Court of Inquiry which was constituted vide letter No.213682/48/ASA/A2 dated 8.2.1993 of the General Officer Commanding, Madras-9, as null and void and to direct the respondents to pay all the salaries, emoluments, consequential benefits of service to the applicant with effect from 1st October, 1996 and in future to pay compensation for violation of the Constitutional rights of the applicant under Article-21 of the Constitution of India. The applicant also prayed for stay of further and consequential proceedings of Staff Court of Inquiry pending before the 2nd respondent during the pendency of this application and also to supply all documents of defamatory, character assassination letters, reports, information between the respondents 1 to 5 and respondent No.6 on one hand, the respondents 1 to 5 and respondent No.6 on the other, as they are required by the applicant

for preparing the cases and her salary may be directed to be paid forthwith and the attachment order against the applicant to a different station as violative of equality may also be stayed.

4. The objections raised by the 6th respondent in the Counter Affidavit filed by him would be as follows :-

The application filed by the applicant do not warrant any valid grounds for the issue of orders as asked for. The allegations levelled by the applicant that during August, 1989, her matrimonial home was attacked by anti social elements in Saroor Nagar, resulting in arson, dacoity, looting, theft, assault in connivance with the Police officials and with their active help, are false and baseless. Per contra, the applicant's husband Mr. P.C. Kakkar, was involved in several criminal cases as accused vide Crime Nos.95/95 under Section 498-A IPC, 239/85 U/S420 IPC, 58/87 U/S 448, 324 IPC; 282/87 U/S498A, 342, 323 IPC; 648/88 U/S 342, 323, 506 IPC; 149/89 U/S448, 506, 323, 354 IPC; 505/89 U/S432, 504, 427 IPC; 596/89 U/S324 IPC; 597/89 U/S379, 324, 509 IPC; 636/88 U/S379 IPC; and 2276/90 U/S494 IPC. The petition submitted by her against Police officials and other loyal citizens were verified and taken action according to law. The dispute in respect of damaging the property by in laws and relatives were pertaining to civil dispute in which late Sharma Kakkar was claiming the properties of her father in law. Further, the father in law clearly stated that the house site

belong to his wife and, therefore, Latha Sharma Kakkar has no claim over it. The applicant's case that the Ranga Reddi District Police foisted 21 false cases is not correct. All those cases are genuine and the complaint given by different parties in different issues. The Police never treated those cases as false. When a Non-Bailable Warrant was issued by III Additional Chief Judicial Magistrate, Agra, and sought to be executed against Mr. P.C. Kakkar, the applicant had managed to help her husband to escape from the house and gave lot of trouble in approaching her husband for execution of the warrant despite the applicant was a military Captain, who should have surrendered her husband before the Police voluntarily. She was a party to give shelter to a warrantee. The allegation that the Sub Inspector of Police, Saroor Nagar, had trespassed, insulted and outraged the modesty of the applicant are all false and motivated. The letter No.Secret/Int./39/SB/14/RR/93 dated 26.2.1992 sent to army people by the Superintendent of Police, Ranga Reddi District, is not illegal and it was only a inquiry report made by the Police officials based on the facts on a confidential inquiry and the antecedents of the applicant. It is, therefore, prayed that the application against the respondents may be dismissed.

5. The objections raised by the respondents 1 to 5 and 7 to 11 through their Counter Affidavit would be as follows :-

The record of service of the applicant indicates that she has indisciplined antecedents. There are a number of disciplinary cases under Army Act pending against her and she is refusing to cooperate with the authorities for their completion. The Court of Inquiry assailed in the application was referred by her as instituted on her complaint. On the other hand, it was initiated on the report given by Commandant, Military Hospital, Secunderabad on an incident taken place on 27.1.1993 in which the applicant assaulted the Commandant, Military Hospital, Secunderabad, while he was engaged in his work. The applicant since her commission in December, 1983, made indisciplined threats and she was warned to improve. The applicant had scant regards towards military discipline and the said indiscipline could be borne out by documents received from various units where she worked. The documents produced in Annexure R1 to R-7 would go to show the indiscipline and insubordination of the applicant during her tenure from December 1983 to 11th December, 1992, when she joined duty at Secunderabad. The applicant tried to propagate the business of her husband Dr. P.C. Kakkar by advocating two persons admitted in Military Hospital, Secunderabad, and she was warned for the same. The allegation about the custodial gang rape of Lt. (Miss) Sumithra Rathi on the night of Gandhi Jayanthi is totally false. The Affidavit of Miss. Sumithra Rathi dated 9.7.1993 is produced as Annexure R-8. She denied that she was sexually assaulted by various people. The applicant alone was responsible for entering the office of the Commandant, Military Hospital, Secunderabad,

without permission and attempted to assault the Commandant. The respondents 3, 5 and 6 were not present at that time and they have nothing to do with the case. The complaint against one Sriramulu of Saroor Nagar, Police Station, about insulting and outraging the modesty of the applicant is totally false. The repetitive averments that the modesty has been outraged would show that she has been alleging fictitious complaints. The Court of Inquiry is only a fact finding body and, therefore, her objection to a fact finding body has no meaning. There have been no heinous offence against any lady Army Officer or outraging the modesty of a woman or molestation, murderous assault or custodial gang rape. The incident on 27.1.1993 was a simple assault involving six witnesses. There was no violation of Army Rule-179 or 180. The members of Court of Inquiry never used any force or coercion. No exparte proceedings were initiated against the applicant. The records of the Court of Inquiry would show that she was present throughout the Court of Inquiry proceedings. She was given copies of the Court of Inquiry proceedings under Army Rule-184(2). The order convening the Court of Inquiry was neither tampered nor fabricated nor changed illegally. The said Order was passed by Major General R.K. Dhawan, Brig. Naresh Vij and Brig. V.L. Vohra, assembled at MCME, Secunderabad, to investigate the incident reported by Military Hospital, Secunderabad, as stated in Annexures R-9 and R-10. The document produced dated 26.2.1993, before the Court of Inquiry was not disputed and the contents of the said letter are true facts. The applicant by deception of selling items from Canteen Stores

Department to a civilian and took Rs.30,000/- from one C. Prakash, Son of C.C. Kondiah, aged about 34 years, and did not deliver the items to him. The applicant gave eight post-dated Cheques, four of which have been dishonoured till date and the Affidavit with the compliant would expose the same as produced in Annexures R-11(i) to (vi). She had gone to Parvathi Nursing Home, Secunderabad, and had her pregnancy terminated medically and she did not pay the bills to the hospital in order to foist a fabricated case against the Commandant of Military Hospital, where she could easily have got done at Military Hospital, Secunderabad. The letter and affidavit submitted by Dr. C. Hemalatha Devi as produced in Annexures R-12 and R-13 would prove the same. In July, 1992, the applicant submitted an application for withdrawal of money from her Defence Service Officers Provident Fund and the same was forwarded in a letter dated 22.7.1992 to Headquarters, Andhra Sub-Area for approval and sanction. Such withdrawal of money from DSOPF is regulated by the procedures laid down in Army Order (SAO) 30/S/70, which is applicable to all officers including MNS officers. In the said withdrawal application, she quoted the requirement of the money for betrothal ceremony of her son. But the age of her son was reflected as less than one year. Hence the said application for withdrawal was returned to her through Headquarters, Andhra Sub-Area letter No.2800/10/A(iii) dated 31.7.1992. To that, the applicant wrote back with defamatory allegation against the Deputy Assistant Adjutant General, Headquarters Andhra Sub-Area, namely Lt. Col. (TS) SI Ali. The matter was

investigated by Court of Inquiry and due to the offensive nature of language made in the said letter, it was proposed to initiate disciplinary proceedings against the applicant under Army Act. In the meanwhile, she sent an application dated 30.1.1993 to Hon'ble Governor of Andhra Pradesh, which is produced as Annexure R-15. Under Regulations for the Army, 1987 Para-557, no service person can address communication directly to civil authorities and communication can only be directed through proper channel. Also, it was proposed to initiate disciplinary proceeding under Army Act. Thirdly the applicant absented herself without leave and the Commandant, Military Hospital, Secunderabad, reported her absence without leave to all concerned as produced in Annexure R-17. Under the direction given in the letter No.3110/LS/A dated 28.5.1993 as in Annexure R-18, disciplinary action against the applicant was proposed. All these offences were reported to the superior military authorities in letter No.3110/LS/A (PC) dated 11.3.1993 and 28.5.1993. The applicant was attached to Artillery Centre, Golconda, as per the letter of Headquarters Southern Command, produced as Annexure R-19. No Police Officer has told military authorities to enquire about any complaint lodged by her. Therefore, there could not be any prima facie case on the complaints preferred by the applicant before any of the Hon'ble Courts. Respondents 1 to 5 cannot stop her pay and allowances. It is the CDA (O), Pune, the competent authority for paying the salaries. Since she was on furlough leave for 60 days and also absented herself without leave for 252 days, the applicant was not paid with any salary. The

applicant had scant regards to army discipline and, therefore, she absented herself without any sufficient cause. Any person subject to Army Act and as per section-90A, the applicant cannot get pay and allowances for the period spent on desertion. She was also absent at Military Hospital, Secunderabad, for the periods 14th January to 17th January, 1993, 28th January, 1993, 9th February, 1993 and 21st February, 1993 to 22nd February, 1993. The applicant is thus not entitled to pay and allowances for her period of absence and her pay and allowances are being adjusted for the sums paid to her already. From 10th April, 1992 to 10th June, 1992, the applicant was on furlough leave to which she was entitled to half pay. However, on oversight, the CDA (O), Pune, paid all her full pay and allowances and the said excess payment is required to be adjusted. The married officers who got marriage while in service were under the obligation to submit marriage certificates to the higher authorities. The applicant was repeatedly requested to submit Appendix-C to the said instruction letter, but she did not do so till date. The applicant also showing wilful defiance of orders like the orders of this Court. However, her salary for the month of May, 1993, was remitted to her Bank as seen from Annexure R-21. The applicant produced a list of 15 witnesses who were in no way connected with the incident and, therefore, the Court of Inquiry rightly rejected to call them as it was nothing but delaying tactics. The Court of Inquiry assembled on 8.2.1993 ended its proceedings on 25.5.1993 for a period of more than three months. The said Court of Inquiry was to investigate a simple case of assault and injuries. Therefore,

the Court of Inquiry is legal and is in order. The regulations made under Army Act, Army Rules and Regulations in confirmation with Article-33 of Constitution of India and public policy and the maintenance of discipline and efficiency in the armed forces are universally applied and applicable to all persons subjected to it including the applicant. The applicant is a habitual offender and misrepresenting the facts everywhere. The application lacks merit and, therefore, it may be dismissed.

6. The contentions of the application and the objections of the respondents were considered by the Andhra Pradesh High Court in its Order in W.P.No.6746 of 1993 dated 14.3.1997, and disposed the application after passing the following Order :-

"O R D E R

The relief sought for in this writ petition is to declare the proceedings under the Court of Inquiry which is constituted vide letter No.213682/48/ASA/A2 dated 8-2-1993 of the GOC, Madras-9 as null and void.

The learned counsel for the respondents 1 to 5 and 7 to 11 submits that in view of long lapse of time the enquiry initiated against the petitioner is not being pursued and it is dropped, no further action will be taken against the petitioner in pursuance of the said enquiry on the basis of the impugned letter dated 8-2-1993.

In view of this representation made by the learned counsel for the respondents no further orders are required to be passed in this writ petition. Recording the said representation made by the learned counsel for the respondents this writ petition is disposed of. No costs.

The petitioner further states that her salary for 20 days in October 1996 and for the months of January and February 1997 is not yet paid to her and that she has also to be paid some other amounts like C.C.A. etc. It will be open to the petitioner to take appropriate steps in that behalf in accordance with law separately."

7. In the said Order, it was submitted by the Learned Counsel for the respondents 1 to 5, 7 to 11 that the impugned enquiry initiated against the applicant petitioner was not being pursued and it was dropped and no further action will be taken against the applicant/petitioner in pursuance of the said enquiry on the basis of the impugned letter dated 8.2.1993. While disposing of the said application, the claim of the applicant for her salary for 20 days in October, 1996, and for the months of January and February, 1997, was ordered to take appropriate steps separately for recovery of the said arrears.

8. However, the applicant Captain Mrs. Latha Sharma was ordered to be dismissed from service with immediate effect by the General, Chief of Army

Staff, who had passed order of dismissal on 31.12.1996, which was sought to be executed by Lt. Col. OIC Legal Cases through his letter dated 9.1.1997. The said dismissal order was challenged by the applicant before the High Court of Andhra Pradesh in W.P.No.231 of 2003. The said Writ Petition was ordered to be transferred to the file of this Tribunal, which was received and re-numbered as T.A.No.149 of 2010 and the same was disposed of by this Tribunal on 6.12.2010. In the said Order, this Tribunal has given liberty to the applicant to seek appropriate relief under the earlier Writ Petition No.6746 of 1993 by filing appropriate application in the said proceedings itself and thus the said application in T.A.No.149 of 2010 was dismissed as withdrawn.

9. Thereafter, the applicant has filed appropriate application in W.P.M.P.No.40909 of 2010 to recall the Order of the Hon'ble High Court of Andhra Pradesh made in W.P.No.6746 of 1993 dated 14.3.1997. The said application was allowed and W.P.No.6746 of 1993 was revived in the Order dated 27.1.2012. An amendment application in W.P.M.P.No.40634 of 2012 was filed by the applicant to amend the pleadings and the prayer in W.P.No.6746 of 1993, and an impleadment application in W.P.M.P.No.40744 of 2012 to implead the Chief of Army Staff, New Delhi, as Respondent No.13 in W.P.No.6746 of 1993. The main Writ Petition No.6746 of 1993 was taken up for hearing and when the respondents' Counsel sought for the transfer of

the case to the Armed Forces Tribunal, Regional Bench, Chennai, under Section-14 of the Armed Forces Tribunal Act, 2007, the Learned Single Judge, did not accept the said submission of the respondents' Counsel and passed Orders to that effect on 12.4.2012 against which a Writ Appeal was filed by the respondents before Hon'ble Division Bench of Andhra Pradesh High Court in W.A.No.1046 of 2012 and the same was dismissed. However, in W.P.No.6746 of 1993, the Hon'ble Division Bench of Andhra Pradesh High Court had passed an Order of transfer of the said W.P.No.6746 of 1993 to the file of this Tribunal after allowing the impleadment application as well as the amendment application on 11.12.2012. Thus, the W.P.No.6746 of 1993 was transferred to this Tribunal and the papers were received and the case was re-numbered as T.A.No.01 of 2013 and taken on file.

10. The objections raised in the Additional Affidavit filed by the respondents on 28.6.2013 before this Tribunal would be as follows :-

The validity of the dismissal order passed against the applicant would not arise since the Military Nursing Service Ordinance, 1943, Section-7 clearly defines the authority of the Chief of Army Staff empowered to order dismissal in respect of Military Nursing Service Officers. As far as the Ordinance as a piece of legislation and its validity even 60 days after independence is concerned, it is pertinent to state that amendments to the Ordinance were being made and was in force. The said Ordinance was also

accepted by Hon'ble Apex Court in the case between ***Jasbir Kaur and Others Vs. Union of India***. Therefore, the Chief of Army Staff is fully empowered to take action under the Ordinance against Military Nursing Service Officer and, therefore, there is no infirmity in the order of Chief of Army Staff in dismissing the applicant, who was a Military Nursing Service Officer. The said Nursing Officer commissioned under the Military Nursing Service are not officers within the definition given in Section-3(viii) of Army Act nor they are subject to Army Act as officers under Section-2(1) (a) of the Act. In the said circumstance, an appropriate order as deemed fit in the circumstances of the above case may be passed and to dismiss the application in T.A.No.01/2013 (W.P.No.6746 of 1993 on the file of Andhra Pradesh High Court) being devoid of merit.

11. On the above pleadings, the following points emerged for consideration in this application :-

- 1) Whether the Court of Inquiry constituted as per letter No.213682/48/ASA/A2 dated 8.2.1993 of General Officer Commanding (GOC), Madras-9, has to be declared as null and void ?

- 2) Whether the dismissal order passed against the applicant on 31.12.1996 is vitiated by fraud committed by the respondents with malafide intention against the applicant ?
- 3) Whether the dismissal order passed against the applicant dated 31.12.1996 is affected by the doctrine of sub judice as it was passed during the pendency of the Writ Petition before the Hon'ble High Court of Andhra Pradesh ?
- 4) Whether the respondents are to be directed to reinstate the applicant and to pay all salaries, emoluments, consequential benefits of service to the petitioner with effect from 1.10.1996 and in future and to pay compensation for violation of constitutional right of the petitioner ?
- 5) To what relief the applicant is entitled for ?

12. Heard Captain Mrs. Latha Sharma, the applicant in person and Mr. B. Shanthakumar, Learned Senior Panel Counsel and Mr. V. Balasubramanian, Central Government Standing Counsel assisted by Major Jitender Singh, Learned JAG Officer, appearing for the respondents 1 to 5, 7 to 11 and 13.

13. Subsequently when the matter came up for hearing before us, we thought that assistance of a Senior Counsel is very much necessary in order to effectively adjudicate the questions involved. Therefore, we requested Thiru V.T. Gopalan, Senior Advocate, to assist the Tribunal as Amicus Curiae and he also readily responded to our request and argued the case effectively. We gratefully acknowledge the assistance rendered by Thiru V.T. Gopalan, Senior Advocate.

14. The applicant while reiterating the facts in her argument had also placed certain submissions regarding the Court of Inquiry proceedings, challenged in the Writ Petition turned Original Application. She would submit that she had challenged the Court of Inquiry proceedings originally in the Writ in W.P.No.6746 of 1993 and the said petition was disposed of on the submission of the respondents that the Court of Inquiry proceedings was dropped and no action would be taken against the petitioner. Subsequently on finding that the Court of Inquiry proceedings were not stopped and Show Cause Notice was issued by the respondents with malafide intentions on the basis of the Court of Inquiry also and the applicant was said to have been dismissed from service on 31.12.1996, yet another Writ Petition was filed in W.P.No.231 of 2003 and the said Writ Petition was transferred to the file of this Hon'ble Tribunal and a liberty was given to the applicant to recall the Order passed in W.P.No.6746 of 1993 and accordingly steps were taken by

her and the Order was recalled and W.P.No.6746 of 1993 was revived and the applicant was permitted to amend the pleadings and prayer for reinstatement and for arrears of pay and allowances apart from setting aside the Court of Inquiry and the dismissal order. She would further submit that the said Writ Petition was again transferred to this Hon'ble Tribunal for want of jurisdiction and it was taken on file and the applicant is now before this Tribunal. She would canvass in her argument that the dismissal order passed by the 2nd respondent dated 31.12.1996 under Section-7 of the Indian Military Nursing Service Ordinance, 1943, an Ordinance which was not in vogue due to certain legal formalities. She would also submit that the proceedings under Section-7 of the Indian Military Nursing Service Ordinance, 1943, ought to have taken under Military Nursing Services Rules, 1944, in which there is no procedure mentioned for conducting the process of dismissal. She would also submit that the Military Nursing Service being part and parcel of the army, the procedures of Army Act and Army Rules are applicable and, therefore, the respondents ought to have followed the rules framed under Rule-17 of Army Rules, 1954, contemplated for dismissal of any person under Section-19 and 20 of Army Act. According to the said procedure, since there was no Court martial punishments inflicted upon the applicant, it ought to have been done by issuance of a Show Cause Notice in order to give an opportunity to the applicant to face the charges enumerated in the Show Cause Notice and thereafter any Order should be passed. She would also submit that the applicant was not served with any such Show

Cause Notice by stating that she was a deserter. She would insist further that Show Cause Notice should not have been dispensed with, without any reasons to be recorded. She would also submit that the Court of Inquiry challenged in this application failed to give opportunity to defend her military reputation and character which ought to have been done by the Presiding Officer of the Court of Inquiry. The applicant was not issued with any such notice under Sections-179 and 180 of Army Rules, 1954, and on that score alone, the Court of Inquiry proceedings are liable to be scrapped. Even otherwise, the Show Cause Notice is also based upon the Court of Inquiry proceedings as seen therefrom and any order of dismissal based upon the proceedings of Court of Inquiry cannot be sustained. She would further submit that the 2nd respondent, who was stated to have passed an order of dismissal against the applicant was lower in rank than the applicant and, therefore, no dismissal order could be passed by him against a superior officer, the applicant. She would also emphasise that the applicant being a Commissioned Officer is certainly more higher in rank of the 2nd respondent and the dismissal order passed is null and void against the applicant. She would also submit that the respondents have submitted that the Court of Inquiry proceedings dated 8.2.1993 challenged in this application (W.P.No.6746 of 1993 original) was not being pursued and it was dropped and no further action should be taken against the applicant in pursuance of the said inquiry. However, the Show Cause Notice produced by the respondents contains the Court of Inquiry proceedings also wherein further

action was taken on the basis of the Court of Inquiry, which is contrary to submissions before Court, and she was stated to have been dismissed from service on 31.12.1996. She would also submit that the Hon'ble Andhra Pradesh High Court had believed the words of the respondents and disposed the Writ Petition as no further orders are necessary and the claim of the applicant for arrears of salary was also considered by giving liberty to take separate action. She would also submit that if really the applicant was dismissed from service on 31.12.1996 in consequence of the proceedings taken on the foot of the Show Cause Notice allegedly issued against the applicant and was promptly conducted and the applicant was dismissed from service on 31.12.1996, the respondents should have conveyed the said proceedings as well as the order of dismissal against the applicant, to the Court before 14.3.1997. But it was not done by the respondents which would show that the issuance of Show Cause Notice to the applicant as well as the alleged proceeding and the order of dismissal dated 31.12.1996 are malafide against the applicant and it would be a fraud committed against the Court.

15. She would also submit that even if true, the dismissal order should have been communicated to the applicant, but it was neither communicated nor made known to the applicant. The applicant was present throughout in Court and agitated her rights in the Writ Petition and if really the dismissal

order has been passed on 31.12.1996, it could have been served through her lawyer at Courts or directly on the applicant, while she was at Court. Nothing was turned against the applicant till an order was passed by the Andhra Pradesh High Court in W.P.No.6746 of 1993 on 14.3.1997. All these circumstances would go to show that the dismissal proceedings against the applicant as put forth by the respondents are illegal, malafide, *non est* and tainted by fraud committed upon the Court.

16. She would also submit that the alleged Show Cause Notice proceedings was initiated under Section-7 of the Indian Military Nursing Service Ordinance, 1943, which Ordinance was not in vogue since it was an Ordinance of pre-Constitutional India which was not ratified by any Act of Parliament. After the enactment of the Army Act, 1950, the officers recruited under Military Nursing Service are governed by the provisions of Army Act and, therefore, the entire proceedings of dismissal is illegal. She would request us to declare the dismissal proceedings as illegal on this ground alone. She would also submit in her argument that she was tortured for being a witness in the alleged incident of gang rape against a military women officer and the Court of Inquiry was initiated by one of the accused gang rape officer, namely Virender Singh, and he was instrumental for all the troubles caused against the applicant to initiate dismissal proceedings and passed an order of dismissal behind the back of the applicant without

following any procedure or norms after suppressing the said proceedings before Andhra Pradesh High Court and, therefore, the entire proceedings dismissing the applicant is vitiated and the applicant is entitled for reinstatement. She would also submit that the fraudulent activities of the respondents can be brought to the knowledge of the Court at any time and the element of fraud would vitiate the proceedings of the respondents and, therefore, the applicant is entitled to all the reliefs as asked for. She would also submit that she was tortured from October, 1996 onwards where her salary was not given for 20 days and the salary of January and February, 1997 were also not paid to her and thereafter also, she was not given with salary for no fault of her. She would also submit that her residential quarters, namely a bungalow, was also snatched from her possession and she had to suffer. She would also submit that her husband was also tortured and his private affairs with family members were also given twist and subsequently her husband also died. All these things would put her in lot of troubles which were purely due to the malafide, biased attitude of the respondent officers against the applicant. Therefore, the applicant may also be granted with suitable compensation with a direction against the respondents to pay the same immediately to the applicant. She would, therefore, seek the reliefs, as asked for in the application, be granted to the applicant.

17. The Learned Senior Panel Counsel assisted by the Learned Central Government Standing Counsel and Learned JAG Officer, would submit in his argument that the disciplinary proceedings taken against the applicant under Section-7 of the Indian Military Nursing Service Ordinance, 1943, is quite sustainable and the said Ordinance was subsequently approved in various amendments carried over in the said Ordinance. The said Ordinance was also found to have been enforced in several Judgements. He would rely upon a Judgement of Principal Bench in **T.A.No.38 of 2012** in between ***Jasbir Kaur and Others Vs. Union of India***, that the Indian Military Nursing Service Ordinance, 1943, is still in force and would govern the officers or personnel recruited under the said Ordinance. He would also submit that Show Cause Notice was given to the applicant in order to give her an opportunity to answer the charges mentioned therein, but the applicant refused to receive the same. He would further submit that the contents of Show Cause Notice were not only the Court of Inquiry proceedings, but also other irregularities of the applicant like her absence without leave etc. Since the Show Cause Notice was also in respect of other charges against the applicant, the dismissal order passed against the applicant dated 31.12.1996 has no relevance to the Writ Petition pending in W.P.No.6746 of 1993. The wrong information given to the Hon'ble Andhra Pradesh High Court regarding the Show Cause Notice proceedings would not vitiate the entire proceedings. He would also submit that there is no such intention to give wrong information to the High Court of Andhra Pradesh. He

would also submit that the said Order passed by the Andhra Pradesh High Court was recalled by the subsequent Order passed by the same High Court and, therefore, the applicant would not be an affected party. He would also submit that an opportunity was given to the applicant to resist the charges enumerated in the Show Cause Notice, but she was not inclined to receive the Show Cause Notice and to avail the opportunity. Therefore, the dismissal order passed against the applicant would be valid and there is no necessity either to declare the Court of Inquiry proceedings as null and void or to set aside the dismissal proceedings and to reinstate the applicant into service with all pay and allowances payable from the date of the order of dismissal from service. The applicant was absent without leave and she was declared as 'deserter' and neither her order of dismissal nor the Show Cause Notice issued prior to the passing of the order could be served upon the applicant in person. He would, therefore, submit that the order was well communicated to the applicant and she had filed a Writ Petition in W.P.No.231 of 2003 for setting aside the dismissal order. In the aforesaid circumstances, the proceedings held by the respondents are well within the ambit of the provisions of law. He would also submit that the officers or the authorities concerned are constrained to take action against the applicant in accordance with law and it cannot be said that the officers concerned acted with malafide intention by launching the Court of Inquiry proceedings as well as the disciplinary proceedings against the applicant. Various allegations made against the officers, much less against Virender Singh, cannot be sustained

and they were made to suit the applicant's case. He would, therefore, submit that the application filed by the applicant may be dismissed.

18. The Learned Senior Counsel Mr. V.T. Gopalan, Amicus Curiae, would submit in his argument that the proceedings dealt by the authorities against the applicant cannot be said to be well within the authority. He would refer to the submission of respondents before Hon'ble Andhra Pradesh High Court in W.P.No.6746 of 1993 on 14.3.1997 and the Order passed therein that "due to long lapse of time, the enquiry initiated against the petitioner is not being pursued i.e. Court of Inquiry proceedings constituted on the letter dated 8.2.1993 and it was dropped, no further action will be taken against the petitioner in pursuance of the said letter dated 8.2.1993, which is impugned." He would also argue that the said representation of the respondents before Hon'ble High Court of Andhra Pradesh would make the Court to dispose the petition without passing any order on merits, but to record the submission of the respondents with a direction to take separate proceedings for the payment of the arrears of salary which was not paid to the applicant. He would also submit that the Staff Court of Inquiry which was pending against the applicant was further pursued and a decision was allegedly taken on 31.12.1996 terminating the applicant from service. If really, the decision was already taken on 31.12.1996, the said fact should have been reported before the Hon'ble High Court of Andhra Pradesh on

14.3.1997 when the said W.P.No.6746 of 1993 came up for hearing. He would also submit that according to the applicant, the dismissal order dated 31.12.1996 was ante dated and served on the applicant later and, therefore, she filed W.P.No.231 of 2003 before Andhra Pradesh High Court in the year 2002, and the said application was transferred to this Tribunal on jurisdiction and was numbered as T.A.No.149 of 2010 in which an Order had been passed on 6.12.2010 to approach the Andhra Pradesh High Court in W.P.No.6746 of 1993 for informing the dismissal order despite the submission of respondents on 14.3.1997 and to seek relief in the said application itself. He would further submit that it is an admitted fact that the applicant took steps to re-open the case in W.P.No.6746 of 1993 and the same was allowed and the Learned Single Judge had passed an Order that it need not be transferred to Armed Forces Tribunal, Regional Bench, Chennai, for enquiry. The said Order was challenged before the Hon'ble Division Bench of Andhra Pradesh High Court along with an amendment application and impleadment application filed in the Writ Petition itself and the Division Bench in the appeal in W.A.No.1046 of 2012 dismissed the appeal. The applicant filed W.P.M.P.No.40634 of 2012 in W.P.No.6746 of 1993 before the Andhra Pradesh High Court for amendment of the Writ Petition and to set aside the dismissal proceedings dated 31.12.1996 as null and void and the Division Bench allowed the W.P.M.P.No.40634 of 2012 as prayed for and also ordered transfer of W.P.No.6746 of 1993 to the file of this Tribunal on 11.12.2012. He would further submit that the prayer was further amended

in W.P.No.6746 of 1993 and the entire papers were transferred to the file of this Hon'ble Tribunal and thus it was taken on file in T.A.No.01 of 2013. The observation of Hon'ble High Court regarding fraud committed by respondents should have been taken note of by this Tribunal while passing an Order. While granting liberty to go before the High Court of Andhra Pradesh, this Tribunal observed that it appears fraud had been played on this Court by making false representation on 14.3.1997. While referring to such submission made by the respondents on 14.3.1997 in W.P.No.6746 of 1993, the respondents had made a solemn statement or submission before the Andhra Pradesh High Court that no further action would be taken against the applicant/petitioner in pursuance of the letter dated 8.2.1993 by constituting Court of Inquiry proceedings due to long lapse of time and the enquiry initiated against the petitioner was not pursued. The said statement was recorded by the Andhra Pradesh High Court and the petition was disposed of. The Learned Senior Counsel/Amicus Curiae would insist in his argument that when once a statement has been made and it was also recorded by the Court and such statement cannot be gone back in law and the respondents would be bound by such statements and on this ground alone the termination order alleged to have been made against the applicant cannot be sustained. He would also submit that the said statement was made and recorded in the Order of Andhra Pradesh High Court on 14.3.1997, whereas the order of termination of the applicant was dated 31.12.1996 and that order was also in pursuance of the Staff Court of Inquiry appointed on

8.2.1993, which was impugned in the said W.P.No.6746 of 1993. He would also rely upon the Order of this Tribunal made in T.A.No.149 of 2010 dated 6.12.2010, referring that a perusal of Show Cause Notice issued to the applicant before the order of dismissal dated 31.12.1996 showed that out of many charges levelled against the applicant, one of the charges relates to the Court of Inquiry, which was constituted vide letter dated 8.2.1993, which was challenged under W.P.No.6746 of 1993. Therefore, he would submit that the dismissal order said to have been passed against the applicant was also in pursuance of the Court of Inquiry and the statement submitted by the respondents before the Andhra Pradesh High Court on 14.3.1997 had completely misguided the Court. After making such a solemn statement before the Hon'ble High Court, whether any department could afford to come and say that they have terminated the service is the question. Such a conduct on the part of the department could only be frowned upon and the officers who made such a statement must be separately and seriously dealt with. He would further submit that this suggestion is made before this Tribunal taking into account the need to maintain honesty and purity even in matters relating to services of Government employees and particularly working in defence services. He would, therefore, submit that the question of validity of the Indian Military Nursing Service Ordinance, 1943, is not relevant as the proceedings themselves are found vitiated on other grounds. He would also submit as amicus curiae that the action of the respondents smacks of arbitrariness and unreasonableness besides being vindictive,

which cannot be countenanced, judged from any standards. Therefore, he would submit that the termination order passed against the applicant has necessarily to be set aside and whatever benefits the applicant is entitled to, on setting aside the termination order, be conferred on her.

19. We have given anxious thoughts to the arguments and submissions made by the applicant in person, the Learned Senior Panel Counsel Mr. B. Shanthakumar and Learned Central Government Standing Counsel Mr. V. Balasubramanian along with Mr. Jitender Singh, Learned then JAG Officer for the respondents 1 to 5, 7 to 11 and 13, and the Learned Senior Advocate Mr. V.T. Gopalan 'Amicus Curiae'. We have also perused the material records of the case.

20. **Points No.1 to 3:** The undisputed facts in this case would be that a Staff Court of Inquiry was ordered by the GOC, Area HQ, Madras, to investigate the complaint made by the applicant pertaining to certain incidents in which the applicant happened to be an eye witness. Accordingly the Court of Inquiry started its proceedings in which the applicant raised several objections to the Court of Inquiry including the open court proceedings and sought for in camera proceedings and also asked for copies of documents.

21. According to the applicant, the said Court of Inquiry proceedings proceeded, however, against her as if she had assaulted with criminal force, Brigadier P.S. Choudhary, Commandant, Military Hospital, Secunderabad, but the said Court of Inquiry proceeding were conducted without furnishing copies of documents and reply to objections sought for by the applicant and, therefore, she filed the Writ Petition in W.P.No.6746 of 1993 before the Andhra Pradesh High Court with a prayer to declare the proceedings under Court of Inquiry constituted vide letter No.213682/48/ASA/A2 dated 8.2.1993, as null and void on several grounds. The applicant has also stated that provisions of Rule-179 and 180 of Army Rules, 1954, were not invoked or adhered to and on the threshold, the Court of Inquiry should have been considered vitiated. However, the said W.P.No.6746 of 1993 was disposed of by the Andhra Pradesh High Court on 14.3.1997 on the submission of the respondents that "due to long lapse of time, the inquiry initiated against the petitioner is not being pursued i.e. the Court of Inquiry proceedings constituted on 8.2.1993, and no further action would be taken against the petitioner in pursuance of the said enquiry on the basis of the impugned letter dated 8.2.1993." On the basis of the said submission of statement by the respondents, the High Court of Andhra Pradesh disposed the application after recording the solemn submission of the respondents. Therefore, it is clear that the respondents submitted that they would not take any action against the applicant on the basis of the Court of Inquiry proceedings since it was not pursued against her. In the said Order passed by the Andhra

Pradesh High Court on 14.3.1997, the claim of the applicant for payment of arrears of salary was also disposed of by the High Court by directing the applicant to go for separate proceedings. However, the respondents did not open their mouth to say about any dismissal order passed against the applicant even it was considered outside the scope of the Court of Inquiry proceedings. According to the respondents, the respondents have issued a Show Cause Notice on 9.7.1996 towards her dismissal from service based on certain charges against her and the applicant was evading to receive the Show Cause Notice and the said Show Cause Notice was served through substituted service and thereby an order of dismissal was passed against the applicant on 31.12.1996. The Learned Senior Panel Counsel would draw our attention towards the documents produced as Show Cause Notice and the steps taken for the service of Show Cause Notice and the dismissal order passed on 31.12.1996 and pleaded that how all these proceedings could be concocted in order to take vengeance against the applicant. In order to consider the submission of the Learned Senior Panel Counsel, we have to see the Show Cause Notice and its contents and also the relevant steps taken for service of Show Cause Notice against the applicant and the dismissal order.

22. No doubt, it could be found from the Show Cause Notice that various other charges including absence without leave, have been framed against

the applicant apart from the 7th charge stating the finding of Court of Inquiry proceedings initiated on the letter dated 8.2.1993. This Tribunal had also in its earlier Order passed in T.A.No.149 of 2010 dated 6.12.2010, had categorically stated that the Show Cause Notice issued to the applicant dated 9.7.1996 contains charges regarding the Court of Inquiry proceedings also. In the said circumstances, it cannot be said that the Show Cause Notice issued by the respondents against the applicant dated 9.7.1996 was outside the scope of the Court of Inquiry proceedings dated 8.2.1993. Therefore, a solemn duty is cast upon the respondents to bring this to the notice of the High Court when they submitted before High Court of Andhra Pradesh on 14.3.1997 in W.P.No.6746 of 1993 that there was a disciplinary proceedings pending, but it was not brought to the notice of High Court for passing necessary orders. Furthermore, if really those proceedings were pending, the respondents should have asked for permission to proceed against the applicant on other charges leaving the charge arising on the impugned Court of Inquiry proceedings dated 8.2.1993 and thereafter to pass any orders in the said disciplinary proceedings. Per contra, an order of dismissal was found to have been passed on 31.12.1996 along with the charge arising from the impugned Court of Inquiry proceedings dated 8.2.1993.

23. The Learned Senior Counsel Mr. V.T. Gopalan, Amicus Curiae, would submit in his argument, any statement made by the Department before the

Hon'ble High Court of Andhra Pradesh would be a solemn act and there should not be any wrong submission submitted before High Court. However, the respondents have submitted a statement that "no action will be taken against the applicant in pursuance of Court of Inquiry proceedings since it was dropped due to long lapse of time." This statement whether it is true or not should be taken as solemn statement and any action taken by the respondents against the applicant and against the solemn statement should be deemed as null and void. Considering the submission of Learned Senior Counsel/Amicus Curiae, when we approach this case, the issuance of Show Cause Notice comprising the charges against the applicant in respect of the impugned Court of Inquiry proceedings dated 8.2.1993 also should have been found as *non est* in the eye of law. When the Show Cause Notice is found *non est*, the consequent dismissal order said to have been passed against the applicant dated 31.12.1996 should also have been found *non est* and illegal in the eye of law. The Court of Inquiry proceedings were also assailed by the applicant for want of furnishing of copies to her, when the evidence adduced before it was found against her military reputation under Rule-179 and 180 of Army Rules, 1954. According to her, such legal requisites were not satisfied in the Court of Inquiry proceedings. However, it was stated to have been dropped against the applicant. When the said solemn statement submitted by the respondents before the High Court of Andhra Pradesh, it shall nullify the entire proceedings of Show Cause Notice as well as the dismissal proceedings against the applicant, the dismissal

order passed against the applicant by the respondents would not be enforceable.

24. The Learned Senior Counsel/Amicus Curiae would also cite a Judgement of Hon'ble Apex Court reported in **(2007) 4 SCC 221** between **A.V. Papayya Sastry and others Vs. Government of A.P. and others**, in respect of fraud committed against Courts. In case, the Show Cause Notice proceedings were true and alive and the dismissal order had been passed in accordance with the rules and regulations of the army and the statement given by the respondents before the High Court of Andhra Pradesh on 14.3.1997 was erroneously given, such submission of statement would be amounting to fraud played upon the Court. He would draw the attention of this Tribunal to a passage in the Judgement rendered by Hon'ble Apex Court in the aforesaid Judgement, which would be as follows :-

"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

"Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a

judgment, decree or order – by the first court or by the final court – has to be treated as nullity by every court, superior of inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

25. The said principle was followed by the Andhra Pradesh High Court when the applicant approached for recalling the earlier Order passed by the said Court on 14.3.1997 and thus the petition was revived and after necessary amendments it is being placed before this Tribunal for disposal. While disposing the application seeking for transfer to this Tribunal on 12.4.2012, the Hon'ble Andhra Pradesh High Court observed that a fraud had been played on the said Court by making a false representation on 14.3.1997. All these circumstances and finding of the Court would go to show that the submission made by the respondents on 14.3.1997 was not reflecting the correct statement of the respondents. However, such statement made before the Court should have been accepted as the solemn act and the impugned Court of Inquiry proceedings and the Show Cause Notice proceedings containing the impugned Court of Inquiry proceedings and the consequent dismissal proceedings ending in dismissal of the application on 31.12.1996, are liable to be set aside.

26. It was argued by the applicant in person that the Indian Military Nursing Service Ordinance, 1943, has no legs to stand since it was not made as an act by the Parliament after the Constitution has been codified. The case of the applicant was also that the power conferred on the pre-Constitutional Government to promulgate the said Ordinance was as per provisions in Section-72 of the 9th Schedule of Government of India Act, 1935, and the said Act was also repealed under Article-395 of Constitution of India and, therefore, the Indian Military Nursing Service Ordinance, 1943, has no role to play and the proceedings under Section-7 of the Military Nursing Service Ordinance, 1943, is also null and void. No doubt, the said Act empowered the pre-Constitutional Government to promulgate the Military Nursing Service Ordinance, 1943, and it was repealed and other Ordinances promulgated as per the power conferred in the said Act were also found not valid in law. However, the impugned Military Nursing Service Ordinance, 1943, has been amended through various acts to suit the post-Constitutional India and the name was also changed as the Indian Military Nursing Service Ordinance, 1943. In the said Ordinance, the officer recruited under Indian Military Nursing Service Ordinance, 1943, is empowered to get the privileges equal to the officers governed by Indian Army Rules, 1954. The rules framed under Indian Army Rules, 1954, are also made applicable to the Nursing Officers recruited under the Military Nursing Service Ordinance, 1943. In the said circumstances, the question of

validity of the Military Nursing Service Ordinance is not necessary to decide in this application.

27. It is made clear from the Judgement of the Armed Forces Tribunal, Principal Bench, New Delhi, in **T.A.No.38 of 2012** in between **Jasbir Kaur and others Vs. Union of India**, that the officers recruited under Military Nursing Service Ordinance, 1943, be also governed by the Army Rules, 1954. When it is applied, the Show Cause Notice issued by the respondents to the applicant should have been served against the applicant as per Rule-177 of the Army Rules, 1954. In this regard, the said Judgement is helpful to the applicant only. For the foregoing discussion, we are of the considered view that the applicant is entitled for the relief as sought for by her and all the three points are thus decided in her favour.

28. **Point No.4:** We have elaborately discussed in the previous points and came to the conclusion that the dismissal order passed against the applicant on 31.12.1996 is vitiated by fraud, suppression of facts and the disciplinary proceedings and the impugned Court of Inquiry proceedings tending to the dismissal of the applicant were also tainted with illegality and are not valid in law. In the aforesaid circumstances, the applicant should have been deemed to be in service from the date of her dismissal from service as Military Nursing Officer. Therefore, the respondents 1 to 5, 7 and 13 are

directed to reinstate the applicant in service in the rank she was holding on 31.12.1996, with all back wages and allowances throughout less her period of absence without leave, and the applicant shall also be entitled to arrears of pay and other allowances prior to 31.12.1996. If the applicant is found to have completed the term of her engagement or attained the age of superannuation already, she shall be deemed to be in service in the same rank till such date of completion of engagement or attaining the age of superannuation, held by her and be provided with service pension as per rules. In the event, her term of engagement or the attainment of superannuation has not been reached, the applicant shall be permitted to continue in her service.

29. As regards the claim of compensation of the applicant, we have carefully considered the plea of the applicant. In view of the finding that the dismissal order passed by the respondents was illegal, tainted by fraud, vindictive and with malafide intentions, the applicant had to suffer throughout from 1997 onwards. The reference as to the criminal cases launched against the husband of the applicant or other sufferings regarding eviction from the allotted Quarters of the applicant, are not relevant to the decision reached by us in this application and, therefore, the claim of compensation for those alleged harassment is not arising out of the present cause of action. However, the applicant was put in much difficulty and

harassment by virtue of a wrong and illegal dismissal order and the errant officials are found guilty of having malafide intention to dismiss the applicant from service. Therefore, we are of the considered opinion that the applicant is entitled to a compensation of Rs.1 lakh only from respondents 7 and 13. Accordingly, this point is answered in favour of the applicant.

30. **Point No.5:** In view of our findings in the previous points, we are of the considered view that the relief sought for by the applicant are liable to be ordered as indicated above. The respondents 1 to 5, 7 and 13 are directed to reinstate the applicant if her term of engagement or period of service is alive and to pay the arrears of salary including pay and allowances with all benefits accrued to her from the date of deemed reinstatement till the date of actual reinstatement and permit her to do service. In the event, the applicant's period of engagement was already over or she attained the age of superannuation already, the pay and allowances and other benefits shall be calculated till the date of completion of her service and be paid. Thereafter, she will be paid pension in addition to the eligible service and pension benefits payable towards her service. Compensation of Rs.1 lakh shall also be paid. The aforesaid payments be made by the respondents 7 and 13 within a period of three months. The failure on the part of the respondents 7 and 13 would make them liable to pay the said arrears along with an interest of 12% p.a., till the date of payment.

31. Application is allowed with the aforesaid observations and direction as indicated above. No order as to costs.

Sd/-
LT GEN ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

4.10.2013
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

NCS

To:

1. The General Officer Commanding (GOC),
Hq. ATNKK & G Area, Islands Grounds,
Madras-600 009.
2. The Presiding Officer, Staff Court of
Inquiry, MCEME, Trimalgiri,
Secunderabad-15.
3. Commander, Hq. Andhra Sub Area,
Secunderabad-500 015.
4. Commandant, Military Hospital,
Secunderabad-500 015.
5. Registrar/OC TPS, Military Hospital,
Secunderabad-15.
6. Superintendent of Police, Ranga Reddi District,
Hyderabad-500 004. A.P.
7. Union of India, represented by its
Secretary, Ministry of Defence,
New Delhi.
8. Maj General R.K. Dhawan, Presiding Officer,
Staff Court of Enquiry, MCEME, Trimalgiri,
Secunderabad-500 015.
9. Brig. R. Loganathan, Commander, Hq.
Andhra Sub-Area,
Secunderabad-15.
10. Brig, P.S. Choudhury, Commandant,
Military Hospital,
Secunderabad-500 015.
11. Lt. Col. Niraj Pant, Registrar/OC Tps,
Military Hospital,
Secunderabad-15.

12. Sambasiva Rao, Superintendent of Police,
Ranga Reddi District,
Hyderabad-500004-A.P.
13. The Chief of Army Staff,
New Delhi.
14. Mr. V.T. Gopalan,
Senior Advocate
(Amicus Curiae appointed by Hon'ble Tribunal)
15. Mr. B. Shanthakumar, SPC
Counsel for respondents.
16. Mr. V. Balasubramanian, CGSC
Standing Counsel for respondents.
17. OIC Legal Cell (Army),
ATNK & K Area HQ,
Chennai-9.
18. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

T.A.No.01 of 2013

4.10.2013