

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.35 of 2013

Tuesday, the 17th day of September, 2013

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

AND

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

Rank – Ex-Sgt, Name– R.K. Sutar
Service No.790831–N,
Son of – Mr. Balaram Sutar, aged about 37 years,
No.31 (Old No.29), Palavedu Road, Mittanamalli,
IAF Avadi, Chennai-600 055.

... Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S. Biju

Vs.

1. Union of India,
Represented by–The Chief of the Air Staff,
Air Headquarters, VayuBhavan,
New Delhi-110 011.
2. The Air Officer Commanding-in-Charge,
HQ Training Command IAF,
JC Nagar Post, Bangalore-560 006.
3. Commanding Officer,
WTI AF, Air Force Station Tambaram,
Chennai-600 046.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

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

1. This application is filed by the applicant praying for a direction to call for the records in respect of the impugned dismissal Order No.TC/C 10370/3/Prov dated 5.9.2012, passed by the 2nd respondent and the impugned Order No. AIR HQ/C 23407/1648/PS dated 7.1.2013, passed by the 1st respondent and to quash them as biased, perverse, arbitrary, unlawful, illegal, not explanatory with malafide intentions and direct the respondents to reinstate the applicant in Air Force Service with seniority benefits or to grant service pension to the applicant with interest and with all consequential monetary benefits and also to pass such other and further orders.

2. The factual matrix of the case of the applicant as stated in the application would be as follows :-

The applicant was enrolled in Indian Air Force on 15.7.1997 as RDO/Fit and promoted to the rank of Sgt on 19.1.2011. He was unlawfully dismissed from service on 18.9.2012 under Section-20(3) of the Air Force Act, 1950 read with Rule-18 of the Air Force Rules, 1969, after completion of 15 years

and 65 days in regular service. The applicant performed his duties with full devotion. He obtained civil qualifications, namely M.A. Public Administration, M.B.A. (Personnel), A.M.I.E. (Electronics & Communication). He is a married man having a son aged about 5 years and was living happily with his wife and son in a married accommodation allotted by the 3rd respondent. The applicant received a Show Cause Notice from the 2nd respondent in No.TC/C 10370/3/Prov dated 8.5.2012, issued under Rule-18(1) of Air Force Rules, 1969 read with Section-20(3) of Air Force Act, 1950. In the said Show Cause Notice, he was alleged to have kissed, hugged, touched the private parts of a 6 year old child of Sgt. P.K. Sharma and made her to touch the applicant's genitals at SMQ No.91/7 at the residence of the applicant on 18.3.2012 at about 1900 hours when she came to play with the applicant's son. It further states that the said Sgt. P.K. Sharma was residing in SMQ No.91/6, by the side of the applicant's residence during the relevant period. A Court of Inquiry proceedings was also stated in the Show Cause Notice blaming the applicant for having molested 6 year old Kavya, daughter of Sgt. P.K. Sharma, by kissing her cheeks, hugging her, touching her genitalia and making her touch the applicant's genitals. It is further stated in the Show Cause Notice that the conduct of the applicant was serious and grave in nature and besides being unbecoming of an airman of Indian Air Force and was also prejudicial to community living in the Air Force. The applicant was given 14 days' time to reply or defend as against those allegations

averred in the Show Cause Notice, which was received by him on 25.5.2012. A reply was submitted by the applicant on 1.6.2012 in answer to the said Show Cause Notice dated 8.5.2012. The applicant denied the allegations/charges made in the Show Cause Notice against him. He was living with dignity and earned reputation in service and society and due to his high civil qualification and achievements, few neighbours were jealous of him. The children often used to come to play with the applicant's 04 year old son in the afternoon and many occasions, the applicant and his wife were interacting with them inside the quarters. The applicant never misbehaved with children or used to play with them alone. The applicant used to drink legally in order to remove mental stress during Sundays and holidays in the evening at the house of the applicant. He never drank liquor outside the quarters. On 18.3.2012, a Sunday evening, at about 0700 P.M., the applicant was with his drinks inside the quarter and his wife and son were playing outside the quarters. The daughter of Sgt. P.K. Sharma, namely Kavya, 06 years old and daughter of Sgt. P.K. Sharma, came inside the quarter for chocolate, but the applicant did not have any chocolate as it was hidden by his wife and the girl immediately left unhappily. The applicant did not molest her in any manner or by kissing her cheeks, hugging her, touching her genitalia and making her touch his genitals. There was no reason or motive on his part to do such an act of molestation against the small girl. When the applicant was alone in the evening walk on 21.3.2012,

the said Sgt. P.K. Sharma and his friend Sgt. M.K. Singh, charged and blamed the applicant for his alleged molestation. They started beating the applicant during the evening walk. The applicant resisted them to prove his innocence, but they had muscle power and threatened the applicant with dire consequences, if reported. The applicant immediately at about 2100 hours, went to his section-in-Charge JWO Yadav's quarter and reported the incident of physical assault against him. To the complaint, the JWO Yadav assured justice, but the said JWO Yadav was also having very good relationship with Sgt. P.K. Sharma and Sgt. M.K. Singh. Hence the entire story was reversed against the applicant. On 22.3.2012 evening, JWO Tyagi called the applicant over phone and he was taken to a lonely place where the applicant was threatened by the said JWO and one more Sgt. and was forced to sign their hand written papers and even the applicant was not allowed to read the contents of the writing. On 24.3.2012, the applicant was called by CAO, Air Force Station, Tambaram, and the explanation offered by the applicant was not heard and Court of Inquiry was initiated against the applicant on 24.3.2012 itself. There was no complaint filed by anybody against the applicant. Rather the applicant approached the Air Force authority against the physical violence against him by Sgt. P.K. Sharma and Sgt. M.K. Singh on 21.3.2012. Subsequently, the applicant and his wife were called by the Court of Inquiry and the matter was typed as to suit their convenience and the applicant and his wife were told to put signatures as

witness No.1 and 2. The applicant was not given any opportunity to cross-examine or afford any defence, but he was treated as a scape goat. The applicant was not aware that the Court of Inquiry proceedings had gone against him and after seeing the Show Cause Notice and its recommendations the applicant was shocked and prayed the respondents to review the entire Court of Inquiry proceedings and order for a fresh trial in the interest of justice. The evidence of the child was not taken and she did not undergo medical examination during the Court of Inquiry. The allegations against the complaint were not proved. The said Court of Inquiry was biased since the applicant was not given any opportunity to cross-examine or defend himself. The 2nd respondent did not consider the reply of the applicant submitted to the Show Cause Notice and passed the impugned dismissal order on 5.9.2012, which is arbitrary, biased and with malafide intentions. Subsequently, the 3rd respondent issued a final clearance of discharge dated 17.9.2012 directing to send him out of service with effect from 22.9.2012. The applicant submitted a Statutory Complaint before the 1st respondent on 16.9.2012 against the impugned dismissal order passed by the 2nd respondent. He also sent a legal notice dated 17.9.2012 and 18.9.2012 along with a copy of the Statutory Complaint to restrain the 3rd respondent from making him SOS pending the Statutory Complaint dated 16.9.2012. Immediately, the 3rd respondent became audacious and on 18.9.2012 itself, the applicant was called and issued Discharge Certificate by

the 3rd respondent and he was directed to vacate the quarters. Though the applicant could not complete his clearance since the date of dismissal was given as 22.9.2012. The statutory complaint was disposed and signed by one Squadron Leader for the Chief of the Air Staff dated 7.1.2013, confirming the dismissal order passed against the applicant. The applicant was thus deprived of his further 05 years of service and he also lost the benefits of 15 years long and unblemished service in consequence. The applicant was put to monetary loss, mental agony and, therefore, the present application has been filed. Since the impugned orders passed by the respondents are biased, arbitrary, unlawful and with malafide intentions, against the principles of natural justice and Article-14 of the Constitution of India, the application may be allowed granting the main relief or alternative relief.

3. The objections raised by the respondents would be as follows :-

The applicant was posted to the strength of WTI, AF with effect from 26.5.2008 and was residing with his family, namely wife and 04 year old son at SMQ No.91/7, Ground Floor, since October, 2008. Similarly, Sgt. P.K. Sharma, Wpn Fit, was posted to 4 (TN) Air Sqn NCC with effect from 27.10.2010 and was residing with his family, wife and 06 year old daughter, namely Miss Kavya at SMQ No.91/6. Both families were staying in the same block. Miss Kavya, daughter of Sgt P.K. Sharma, along with other children

in the campus visited the applicant's family to play with his 04 year old son. On 18.3.2012 at about 1930 hours, Miss Kavya returned home slightly late after the usual playing hours. On enquiry, Mrs. Sharma found her daughter unusually quiet, hesitant and reluctant to answer the queries. On further insistence, the girl revealed that she had visited the applicant's residence in the evening and the applicant was alone at his house and he molested/sexually harassed the child by kissing her cheeks, hugged her and touched her genitals and when she resisted, he let her go. Mrs. Sharma informed her husband Sgt. P.K. Sharma about this act, she also informed Mrs. Sutar, the applicant's wife, about this misconduct on the part of her husband. The said Sgt. Sharma and his wife, being an orthodox Hindu family, decided to remain quiet. However, on 21.3.2012, Sgt. Sharma along with Sgt M.K. Singh met the applicant to discuss this issue. The applicant initially denied the act of molestation, but later confessed the molestation of the girl child. The applicant informed about the incident to JWO S.K. Yadav, who in turn, reported the matter to his OIC. A Court of Inquiry was convened on 24.3.2012 at AF Station, Tambaram, regarding the misconduct at Madambakkam Camp SMQ area happened on 18.3.2012. The Court of Inquiry found the applicant guilty for having molested 06 year old Kavya, daughter of Sgt. P.K. Sharma, by kissing her cheeks, hugging her, touching her genitalia and making her touch his genitals. The Court of Inquiry proceedings were duly approved by AOC and was forwarded to HQ TC, IAF

on 10.4.2012. The case was processed for dismissal of the applicant under Section-20(3) of Air Force Act, 1950 read with Rule-18 of Air Force Rules, 1969. The Show Cause Notice issued was served to the applicant on 25.5.2012 at 1000 hours by giving 14 days time to submit his reply. The reply to Show Cause Notice from the applicant was received on 1.6.2012 and was forwarded to HQ TC, IAF. The Order of dismissal from service against the applicant was received from HQ TC, IAF vide letter No. TC/10020/23/P3 dated 14.9.2012 and the original copy of the same was handed over to the applicant at 1355 hours on 15.9.2012. Thus the applicant was dismissed from service on 18.9.2012 F.N. The applicant submitted statutory complaint against his dismissal. The Chief of the Air Force vide Air HQ/C 23407/1648/PS dated 7.1.2013 disposed of the statutory complaint by rejecting being devoid of merit. Aggrieved against the rejection of statutory complaint, the applicant filed the present application. The applicant's claim that he was innocent is not correct. In the Court of Inquiry, the applicant's own statement and statement of Witness No.2, namely Mrs. Parimita Sutar, coupled with Witness No.3 Sgt. P.K. Sharma, and Witness No.5 JWO S.K. Yadav, make it clear that the applicant had molested Ms. Kavya, D/o. Sgt. P.K. Sharma. The manhandling by Sgt. P.K. Sharma and another on the applicant was an afterthought. The applicant himself had confessed having misbehaved with the minor child Ms. Kavya, to his section-in-charge JWO S.K. Yadav. The parents of Ms. Kavya did not make a complaint against the

applicant since they wanted to forget the incident and to avoid trauma of their minor daughter faced through the incident. The confession was given by the applicant before JWO S.K. Yadav, who in turn reported the matter to his office-in-charge and on that basis investigative machinery was set in motion and, therefore, the requirement of the complaint is not mandatory when the first information was sufficient to proceed with the investigation. The applicant did not cross-examine any witness, who deposed before the Court of Inquiry which would indicate that the evidence of these witnesses are true. Medical examination as well as the evidence of the child witness are not necessary for the purpose of completing the investigation through Court of Inquiry and to initiate disciplinary proceedings against the applicant. The reply to Show Cause Notice was not satisfactory and, therefore, dismissal order was passed and were served against the applicant on 15.9.2012 itself. The applicant was rightly dismissed from service on 18.9.2012 F.N. The redressal of grievance submitted through statutory complaint was considered by the Chief of Air Staff as devoid of merit. The orders of the Chief of Air Staff was communicated to the applicant by Squadron Leader Ashish Pant, Deputy JAG (Air) (Discipline), Air HQ (VB). An airman can be dismissed from service for his unbecoming conduct at any time and the applicant was deprived of his benefits since he was dismissed from service. The applicant was given particulars during Court of Inquiry proceedings as well as in the proceedings taken under Section-20(3) of Air

Force Act, 1950, coupled with Rule-18 of Air Force Rules, 1969. The application is devoid of merits and, therefore, it may be dismissed with costs.

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

- 1) Whether the impugned dismissal order No.TC/C 10370/3/Prov dated 5.9.2012, passed by the 2nd respondent is liable to be set aside on the grounds of biased, arbitrary, perverse and with malafide intentions ?
- 2) Whether the impugned order No.AIR HQ/C 23407/1648/PS dated 7.1.2013, passed by the 1st respondent is liable to be quashed as biased, arbitrary, illegal, perverse and with malafide intentions ?
- 3) Whether the respondents are liable to be directed to reinstate the applicant in Air Force Service with seniority benefits ?
- 4) Whether the applicant is entitled to alternate relief of grant of service pension with interest and all consequential monetary benefits ?
- 5) To what relief the applicant is entitled for ?

5. Heard Mr. M.K. Sikdar and S. Biju, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Mr. R.K. Shukla, MWO (Legal Cell), Air Force Station, Avadi, Chennai, appearing for the respondents.

6. The Learned Counsel for the applicant would submit in his argument that the applicant was performing his duties with full devotion from the date he was enrolled in Indian Air Force on 15.7.1997 without any blemish or defects in his service records, without any adverse remarks. He would also submit that the applicant is highly qualified with M.A. Public Administration, M.B.A. (Personnel), A.M.I.E. (Electronics & Communication). He would also submit that the applicant was falsely charged with the molestation of six year old Kavya, daughter of Sgt. P.K. Sharma on 18.3.2012. Actually, the applicant was having a Sunday evening drinks at his house and he could recollect that six year old Kavya, D/o. Sgt. P.K. Sharma, came inside the house for chocolate and she could not be given the chocolate as it was hidden by his wife and, therefore, she immediately left unhappily. He would further argue that there was no molestation incident as alleged against the applicant, but what happened was that the six year girl Kavya returned without any chocolate. He would further submit that the applicant was manhandled by Sgt. P.K. Sharma and Sgt. M.K. Singh when he had an evening walk on 21.3.2012, and the said incident was reported by the

applicant and his wife to section-in-charge JWO S.K. Yadav, but he being the friend of Sgt. P.K. Sharma, reported the said matter as against the applicant and the Court of Inquiry was convened for investigation. He would also submit that there was no complaint made by the parents of the child to initiate any Court of Inquiry, but was initiated on a complaint given against the applicant by Sgt. P.K. Sharma and Sgt. M.K. Singh. The Court of Inquiry was also not properly conducted and no opportunity was given to cross-examine the witnesses. He would further submit that the alleged victim, namely the girl child Miss Kavya, was not examined and her evidence was not recorded nor she was referred to medical examination to prove the alleged molestation. He would further submit that the evidence collected in the Court of Inquiry was pre-determined and the applicant and his wife were directed to sign the typed matter to which they were not given any opportunity to peruse. He would further submit that the other witnesses are interested witnesses and their evidence cannot be taken as gospel truth so as to come to conclusion by the Court of Inquiry finding the applicant guilty for molesting the six year old Miss Kavya. He would further submit that no opportunity was given by the Presiding Officer of the Court of Inquiry to conduct a fair investigation. The alleged evidence of the applicant cannot be treated as a confession since it was not deposed by him. The recording of evidence was not affirmatively shown and typed and, therefore, it cannot be relied upon. He would further submit that the provisions of Rule-18(1) of Air

Force Rules, 1969, would not be attracted since the applicant was not convicted by a criminal court or a court martial. The applicant was not given any opportunity to go through the findings of Court of Inquiry prior to the issuance of Show Cause Notice. He would further submit that the applicant was not given any further opportunity after Show Cause Notice to disprove the allegations made in the Show Cause Notice. He would further submit in his argument that the dismissal order passed by the 2nd respondent was hasty and the applicant ought not to have been discharged from service since he has preferred a statutory complaint before his discharge and it was pending. He would, therefore, request us to set aside the dismissal proceedings based on the Court of Inquiry and to set aside the dismissal order also. Further, he would submit that the statutory complaint was not disposed by the Chief of Air Staff, but it was signed by one Squadron Leader Ashish Pant, Deputy JAG (Air) (Discipline), for Chief of Air Staff and it is vitiated on that score alone. He would also submit that the order passed on 7.1.2013 rejecting the statutory complaint is nothing but reiteration and confirmation of the opinion of Court of Inquiry and the dismissal order, and there was no application of mind in passing such an order. He would, therefore, request us to set aside the order dated 7.1.2013 in rejecting the statutory complaint. He would further submit that the Court of Inquiry proceedings followed by the dismissal order, if set aside, the applicant is entitled to be reinstated with back wages and other benefits like seniority

etc. In the event that this Tribunal is not accepting the case of the applicant for reinstatement, the dismissal of the applicant is not proportionate to the alleged misbehaviour and the unblemished long service to the tune of 15 years and 65 days regular service may be considered and he may be given with other benefits like pension, gratuity etc. Therefore, he would request us to set aside the dismissal order and to pass appropriate order of reinstatement with benefits or alternatively to grant pension and other benefits.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant was no doubt enrolled in Indian Air Force on 15.7.1997 and was promoted to the rank of Sgt on 19.1.2011, and was in service for about 15 years 65 days till he was dismissed from service on 18.9.2012. He would also submit that the claim of the applicant that he has high qualifications viz. M.A. Public Administration, M.B.A. (Personnel), A.M.I.E. (Electronics & Communication) are not available in the service records. However, the past good conduct or high academic qualifications would not negate the imputation of misconduct for which the applicant was blamed. He would further submit that the applicant was a casual drinker even as per his statement. He would also submit that the presence of the victim girl Miss Kavya, at his house was even admitted by the applicant in his application, but it was a different story that she asked for chocolates and she returned

unhappily without any chocolates since the chocolates were hidden by his wife somewhere. When the applicant himself had informed the Air Force authorities, namely JWO S.K. Yadav, the Air Force authorities accepting his indecent activity, it cannot be said that the child Miss Kavya left the place unhappily for want of chocolates. He would further submit that the Court of Inquiry can be convened on a first information from the authorities based upon the complaint of the applicant with the Air Force authorities. He would further submit that the applicant himself had deposed before the Court of Inquiry about the incident along with his wife as Witness No.1 and 2. The applicant did not opt to cross-examine other witnesses, namely the father of the child Sgt. P.K. Sharma and JWO S.K. Yadav and others. He would further submit that the Court of Inquiry was promptly conducted and the applicant was given opportunity to cross-examine the witnesses and in order to defend himself as per the provisions of Para-790 (a), (b), (c) and (e) of Regulations for the Air Force, 1964. He would also submit that the applicant having participated in the Court of Inquiry is stopped from challenging the Court of Inquiry proceedings. The officers participated in the Court of Inquiry proceedings are not inimical towards the applicant and the applicant himself had signed the deposition in the presence of the officers, who signed in his deposition. He would also submit that the applicant was throughout present as per the direction given by the Court of Inquiry in order to give him an opportunity to participate in the Court of Inquiry as per Para-790 of

Regulations for the Air Force, 1964. He would further submit that the applicant has not availed the opportunity of cross-examining the witnesses who spoke against him and, therefore, he cannot complain about the Court of Inquiry proceedings nor the evidence given by him in the form of confession as already typed in order to vindicate him. He would further submit that the findings of the Court of Inquiry was considered by the Air Headquarters and Show Cause Notice was issued under Section-20(3) of Air Force Act, 1950, coupled with Rule-18 of Air Force Rules, 1969, to which the applicant had replied. He would further submit that the applicant cannot blame the authorities that no opportunity was given to defend his case either before Court of Inquiry or before the authorities concerned. It is not quite correct to say that a dismissal order cannot be enforced during the pendency of a statutory complaint since the said statutory complaint would not stall the disciplinary proceedings. He would, therefore, submit that the dismissal order passed against the applicant was quite legal and it cannot be assailed by the applicant. He would further submit that the statutory complaint was thoroughly considered by the Chief of Air Staff and the impugned order dated 7.1.2013 was passed only by the Chief of Air Staff and it was informed by the Squadron Leader. The argument to the effect that the said impugned order was passed only by the Squadron Leader on behalf of the Chief of Air Staff is not correct and is not sustainable. Therefore, he would request that the dismissal order and the order of the Chief of Air Staff rejecting the

statutory complaint are not assailable and the dismissal order would sustain. He would also submit that the proceedings before Court of Inquiry is not a trial and there was no punishment given in the proceedings of Court of Inquiry and, therefore, it cannot be complained by the applicant that the dismissal of the applicant is not commensurate with the gravity of the offence. He would also submit that the misbehavior of the applicant against the child Miss Kavya is a serious one and the dismissal order is inescapable as the applicant himself has confessed before the Court of Inquiry. The argument of the Learned Counsel for the applicant regarding the non-examination of the child witness and the child was not medically examined would not prove the case beyond reasonable doubt are not applying to the facts and circumstances of the case. He would submit that it is not a trial before a criminal court or court martial where the evidence should be adduced beyond reasonable doubt to prove the guilt of the accused and this being disciplinary proceedings, the theory of preponderance of probabilities would be sufficient for the purpose of proving the guilt of the delinquent. He would, therefore, submit that the applicant's plea of reinstatement or the grant of pension after modifying the dismissal order would be available to the applicant. He would, therefore, request us to dismiss the application.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the records including the Court of Inquiry proceedings produced in original.

9. **Points 1 & 2:** The applicant while seeking to quash the impugned orders, namely the dismissal order dated 5.9.2012 and the rejection of statutory complaint order dated 7.1.2013, has sought for reinstatement into service with all benefits or alternatively to pay the pension and other benefits. The case of the applicant was that he was implicated in a false case of sexual harassment and misbehavior against the six year old child Kavya, daughter of Sgt P.K. Sharma, the neighbor of the applicant. The applicant and the said Sgt P.K. Sharma are neighbours and they are respectively residing in Quarter SMQ No.91/7 and SMQ No.91/6. The applicant was enrolled in Air Force as RDO/Fit on 15.7.1997 and thereafter promoted to the rank of Sgt on 19.1.2011 and had completed 15 years and 65 days of regular service, but was dismissed from service on 18.9.2012 under Section-20(3) of Air Force Act, 1950 read with Rule-18 of Air Force Rules, 1969. According to the applicant, the dismissal order passed by the 2nd respondent was biased, perverse, illegal and with malafide intentions. He would deny that there was no such incident of sexual harassment or misbehaviour against the six year old child Miss Kavya, daughter of Sgt P.K. Sharma. His further contention was that there was no complaint given by the child or the parents of the child to the competent authority so as to convene a Court of Inquiry. However, the applicant would admit that he complained that the Junior Warrant Officer S.K. Yadav about the manhandling by Sgt. P.K. Sharma and Sgt. M.K. Singh, when the applicant

was in an evening walk on 21.3.2012, on the suspicion that the applicant had misbehaved with the child Kavya, D/o. Sgt. P.K. Sharma. It is the answer given by the respondents as well as the Learned Senior Panel Counsel that a complaint with reference to the incident of misbehavior was received by the JWO S.K. Yadav from the applicant and the same was reported to the higher authorities and the higher authorities had taken it as first information and initiated Court of Inquiry. Whether the complaint given by the applicant is with regard to the alleged manhandling by Sgt. P.K. Sharma and Sgt. M.K. Singh or the confession given by the complainant to the higher officer would not matter since an incident was asked to have been investigated through Court of Inquiry. This can be seen from the Court of Inquiry papers for the cause of the convening of Court of Inquiry. It is a settled law that there need not be any complaint for initiating criminal law set in motion or to launch an investigation like the Court of Inquiry under military laws. In the said circumstances, the Court of Inquiry initiated on the basis of the opinion given by the JWO S.K. Yadav to the higher authorities would be sufficient.

10. It is also alleged by the applicant that he used to drink during Sunday evening and as usual on 18.3.2012, a Sunday evening, when he was drinking at his house, the six year old child Miss Kavya, daughter of Sgt. P.K. Sharma, came for a chocolate and no chocolate was available since all

the chocolates were hidden by his wife and his wife and son were outside the house and, therefore, the girl child Miss Kavya went unhappily without chocolate. Such an explanation was offered by the applicant in respect of the time and place of the occurrence as alleged against him. However, the applicant admitted that he was called by the Court of Inquiry to be examined as witness along with his wife. The Court of Inquiry proceedings are produced for our perusal. In the said proceedings, the applicant was examined as Witness No.1 wherein he confessed that he did indeed molest the girl, and certain questions were put by the Court for clarification and he answered. Since the evidence given by the applicant himself was against his military reputation, Para-790 of Regulations for the Air Force, 1964, was invoked and he was asked to be present throughout the enquiry. We can find that his wife was examined as Witness No.2 thereafter and the Court has also posed certain questions and she also answered. The applicant was given an opportunity to cross-examine whereas he did not opt for cross-examination of his wife as Witness No.2. Similarly Witness No.3, namely Sgt. P.K. Sharma was examined and the applicant did not cross-examine and he signed to that effect. Like that, Witness No.4 Sgt. M.K. Singh and Witness No.5 JWO S.K. Yadav, was examined and the applicant was present, but was not opting to cross-examine them. To that extent, he signed in the deposition itself. It shows that sufficient opportunity had been given under Para-790 of Regulations for the Air Force, 1964, and he was present

throughout. When the Presiding Officer and other members of the Court of Inquiry appointed by the higher authorities were present and were conducting Court of Inquiry, how the applicant and his wife were called and were asked to sign in the already typed matter to their prejudice and the applicant himself has signed in the deposition of his wife in order to show his declination to cross-examine her ? All these would go to show that the case of the applicant that he was brought before the Court of Inquiry with the already typed versions and was threatened to put his signature as Witness No.1 cannot be true. Similarly, the deposition of his wife as Witness No.2 would also go to show that she signed as a witness and the applicant had declined to cross-examine her and the Presiding Officer and the members of the Court of Inquiry have also signed in the deposition. This only go to show that the case of the applicant that his wife was also threatened to put her signature in the already typed matter cannot be true.

11. Apart from that, the applicant was pleading bias in the proceedings of the Court of Inquiry, since the evidence of Witness No.3 Sgt. P.K. Sharma, Witness No.4 Sgt. M.K. Singh and Witness No5. JWO S.K. Yadav, were examined in the presence of the applicant and the applicant had declined to cross-examine them and the Presiding Officer and the members of the Court of Inquiry have signed in their deposition. All these circumstances happened in the proceedings would go to show that the proceedings of the Court of Inquiry was rightly convened, the evidence have been promptly recorded

and the evidence adduced before the Court of Inquiry was towards the finding of the act as to the happening of an incident at the Madambakkam area on 18.3.2012. On the basis of the evidence given before the Court of Inquiry, the applicant was given an option to make further statement on the basis of the evidence given by all the witnesses, but the applicant declined to make any further statement and also declined to cross-examine the other witnesses. The applicant himself had signed such a statement on 27.3.2012 before the Court of Inquiry. Thereafter, the finding was given by the Court of Inquiry that the applicant was found guilty for the incident of molestation of the six year old child Miss Kavya and it recommended administrative/disciplinary action to be initiated against the applicant for such misbehavior. So this proceedings would go to show that the applicant was given with all the proceedings and there was no explanation either by the applicant in the application or during the arguments as to the signature found in the statement declining to make further statement or to examine any defence witnesses. Therefore, the argument advanced by the applicant's Counsel that the applicant was not given with the particulars of the Court of Inquiry proceedings and he could understand the proceedings of Court of Inquiry only at the time of issuing Show Cause Notice, is not acceptable.

12. On the basis of the findings of the Court of Inquiry, the higher authorities have decided to issue Show Cause Notice to initiate disciplinary proceedings under Section-20(3) of Air Force Act, 1950, coupled with Rule-18 of Air Force Rules, 1969. It is also not disputed by the applicant that Show Cause Notice was served along with the Court of Inquiry proceedings with the direction to submit his reply within a period of 14 days. It is further admitted by the applicant that he submitted the reply on 1.6.2012. According to the case of the applicant, the contents of the reply was not considered by the 2nd respondent, but arbitrarily with biased attitude, it was rejected and he was dismissed from service. At this juncture, we have to see whether the explanation offered in the reply to Show Cause Notice is sufficient to accept the contentions of the applicant from deviating the disciplinary proceedings. The reply to Show Cause Notice is produced as Annexure A-2. In the said reply, the applicant has raised the validity of the Court of Inquiry proceedings and the non-examination of the child witness, who is stated to be the victim and the non-submission of the victim girl to medical examination. It has also been raised that he did not confess his guilt before the Court of Inquiry and the depositions were not recorded promptly as per rules. As regards the examination of the applicant and his wife as witnesses, we have already dealt with and found that the applicant and his wife were examined as Witness No.1 and 2 and there was no pre-typed versions in the proceedings for the purpose of getting the signatures

of the applicant and his wife. In respect of the other reasons that the child Miss Kavya, was not examined as witness to speak about the incident and she was not subject to medical examination are relevant points to be discussed for the purpose of deciding this issue. Barring the evidence of the child witness and the medical evidence regarding the molestation of the child, would the evidence available before the Court of Inquiry be sufficient is the question. As per the evidence of the applicant himself before the Court of Inquiry, he hugged the child Miss Kavya, fondled and touched her private parts and made her touch his genitals. When the girl resisted, he let her go. In the latter part of his evidence, he would also speak to the effect that he initially denied the act, but later accepted and pleaded forgiveness before Sgt. P.K. Sharma. The evidence of his wife as Witness No.2 would go to show that her husband, the applicant, confessed to her that he had indulged in the misconduct/sexual harassment of Miss Kavya and she felt very much annoyed and ashamed. She scolded her husband and slapped him for such an indecent act. In this case, the applicant in his pleadings admitted that on 18.3.2012, a Sunday evening, when he was drinking liquor, the child Miss Kavya was present inside the house with him asking for chocolate and he searched for chocolate, since no chocolate was available she went unhappily. Therefore, the presence of the child Kavya was admitted by the applicant on the fateful day. His evidence before the Court of Inquiry was corroborated by the extra-judicial confession given before his

wife, which was spoken to by his wife. We have already found that such evidence was not pre-typed by the Court of Inquiry, but was recorded in the course of regular proceedings of Court of Inquiry. Furthermore, the evidence of Witness No.5 JWO S.K. Yadav, would go to show that on 21.3.2012 at about 09.30 P.M., the applicant and his wife came to his residence and the applicant in a separate room confessed about the incident that he had misbehaved with a family child of Sgt. P.K. Sharma, who is a neighbour, under the influence of liquor and he was manhandled by Sgt. P.K. Sharma and he brought the incident to his knowledge i.e. Witness No.5. The said evidence given by Witness No.5 was also not elected to be cross-examined by the applicant. This evidence would go to show that the applicant had not only confessed to his wife, but also to the JWO S.K. Yadav, who was examined as Witness No.5. Apart from that, the victim's father Sgt. P.K. Sharma, who was examined as Witness No.3, would also disclose that the applicant had pleaded guilty and sought for pardon from him. All these evidence would cumulatively show that on the fateful day i.e. on 18.3.2012, a Sunday evening, when the applicant was drunk at his house, the family child came inside his house not for chocolate and she did leave unhappily for not providing chocolate, but due to the misbehavior of the applicant by kissing her cheeks, touching her genitalia, and made her to touch his genitals and thus caused sexual harassment to the child. All these evidence led to the Court of Inquiry to find that the applicant misbehaved

with the six year old girl child Miss Kavya, daughter of Sgt. P.K. Sharma, on the fateful day and disciplinary or administrative action to be taken by the higher authorities.

13. No doubt, the girl child Miss Kavya was not examined to speak about the incident. The reason attributed for non-examination is that the parents did not want to make the victim girl to be produced as evidence and subject her to another trauma. Furthermore, the non-submission to medical examination was also reasoned with the same kind. In the absence of the evidence of the victim girl as well as the medical evidence of sexual harassment, would it be sufficient to look upon the other evidence produced before the Court of Inquiry. A Court of Inquiry proceedings is nothing but an investigation and the finding reached would go to show about the occurrence of the incident complained. The finding of the Court of Inquiry was not relegated to any Court martial proceedings by framing charges and by recording summary of evidence. In the case of a trial before a criminal court or court martial, it is necessary that the vital evidence would be the victim's and the medical evidence is also a requirement to reach a decision beyond reasonable doubt. Criminal jurisprudence requires such a standard of proof beyond reasonable doubt, but the finding of the Court of Inquiry is relegated to the disciplinary proceedings. It is a settled law that in the case of disciplinary/administrative proceedings, the standard of proof required would

be the preponderance of probabilities as required in civil cases and there is no requirement to prove beyond reasonable doubt. This position has been reiterated in several Judgements of Hon'ble Apex Court. In a Judgement of Hon'ble Apex Court reported in **(2006) 5 SCC 88** in between **M.V. Bijlani Vs. Union of India and others**, it has been laid as follows :-

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

14. Similarly in yet another Judgement, the Hon'ble Apex Court had affirmed the said view as reported in **(2013) 2 SCC 740**, in between **State Bank of India and others Vs. Narendra Kumar Pandey**, which would run as follows :-

"23. The inquiring authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental enquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court in Union of India v. Sardar Bahadur and R.S. Saini v. State of Punjab. The documents produced by the Bank, which were not controverted by the charged officer, support all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the Bank and not controverted, it is always open to the inquiring authority to accept the same."

15. On a careful understanding of the aforesaid Judgements of Hon'ble Apex Court, we could find that the criminal trial is different from disciplinary proceedings/administrative actions. The evidence required before the

enquiry officer of the department of enquiry, who being a quasi-judicial authority, would be preponderance of probabilities to prove the charges on the basis of those evidence.

16. Therefore, the administrative proceedings taken against the applicant by issuing Show Cause Notice under Section-20(3) of Air Force Act, 1950, coupled with Rule-18 of Air Force Rules, 1969, is a administrative proceeding and the finding of the Court of Inquiry is being used as a piece of evidence for taking action against the applicant. In the administrative proceedings, there is no need for the evidence produced to be beyond reasonable doubt. It is sufficient to hold the delinquent as guilty if preponderance of probabilities of evidence is present. As far as the present case is concerned, the Court of Inquiry had reached the finding on the basis of the evidence produced before it even without the victim child's evidence and medical evidence. Therefore, the examination of the child victim as well as the medical evidence are not necessary for holding the applicant as guilty in the disciplinary proceedings. Therefore, the decision reached in the disciplinary proceedings held under Section-20(3) of Air Force Act, 1950, coupled with Rule-18 of Air Force Rules, 1969, are quite legal. There is no illegality, perversity, bias or malafide intention in the said finding nor in the proceedings of Court of Inquiry.

17. The Learned Counsel for the applicant strenuously argued that Rule-18 of Air Force Rules, 1969, is applicable to those who have been convicted under Criminal court or Court martial proceedings and, therefore, the whole dismissal order is vitiated. On a careful understanding of Rule-18, would go to show that the conviction rendered in Criminal courts as well as any Court martials are excluded. There was no trial before Court of Inquiry and, therefore, it is squarely attracted under the provisions of Rule-18. Therefore, the argument advanced by the Learned Counsel for the applicant is not correct.

18. As regards the challenge against the order passed by the Chief of Air Staff in rejecting the statutory complaint, it was argued that the said order was not passed by the Chief of Air Staff, but was made by one Squadron Leader and signed by him. Moreover, it was insisted in the argument that the statutory complaint was not considered, but the case of the respondents have been approved without any application of mind. The said impugned order passed by the Chief of Air Staff dated 7.1.2013 is produced as Annexure-A9. In the said order, the title is named as follows :-

**“ORDERS OF THE CHIEF OF AIR STAFF IN RESPECT OF
REPRESENTATION BY EX-790831 SGT RK SUTAR
AGAINST HIS DISMISSAL ORDER”**

19. The Squadron Leader, who has signed at the bottom of the order, has signed it on behalf of Chief of the Air Staff for the purpose of communicating the said order to others including the applicant. The signing of the Squadron Leader at the bottom of the order would not mean that it was passed by him instead of Chief of the Air Staff. The impugned order dated 7.1.2013 was passed by Chief of the Air Staff and the original would be retained by the 1st respondent and it would be administratively communicated with the signature of the Squadron Leader. Furthermore, the contention that the Chief of the Air Staff did not apply his mind cannot be true since the said order was dealing with objections raised by the applicant in the statutory complaint and it was a full-fledged speaking order. Therefore, it cannot be said that the Chief of the Air Staff did not apply his mind in rejecting the statutory complaint. Moreover, it was also argued that the dismissal order was passed during the pendency of statutory complaint and, therefore, it would not be sustainable. As far as the present case is concerned, the dismissal order was passed on 15.9.2012 itself, which was made effect on 18.9.2012. Therefore, it cannot be said that the applicant had preferred the statutory complaint even before 15th September, 2012 and the dismissal order was passed during the pendency of the statutory complaint. Actually, the applicant sent the statutory complaint on 16.9.2012 only. Further more, a statutory complaint cannot be preferred by a person who is not a subject of Air Force. Even otherwise, the statutory complaint cannot be preferred

during the course of disciplinary proceedings. In these circumstances, the said argument of the Learned Counsel for the applicant is also not sustainable.

20. As regards the merits of the decision reached in the administrative proceedings and in the order of Chief of Air Staff in the statutory complaint, we could understand that the findings of the Court of Inquiry was totally accepted in the proceedings as well as in the order passed by Chief of the Air Staff. Actually, there was no complaint given for initiating the Court of Inquiry on the side of the victim girl or the parents of the victim girl. It was found that the non-giving of complaint is not a defect. However, the circumstances for not giving complaint would be relevant. Before the Court of Inquiry, the victim girl's father, namely Sgt. P.K. Sharma, deposed as Witness No.3. In his evidence he would state that on 21.3.2012 in the evening, himself and Sgt. M.K. Singh saw Sgt. R.K. Sutar the applicant, walking outside the premises of his house and he called him and discussed the issue with him. Witness No.3 told him that his child had revealed the complete molestation incident in which the applicant was involved and the applicant reluctantly confessed the act of molestation and pleaded forgiveness. Witness No.3 told him that such an act cannot be forgiven. As Witness No.3 was extremely angry, he slapped him two to three times and there was no reaction from the applicant. The applicant also told him that

he could do whatever he wanted, but forgive him. This evidence of Witness No.3, the father of the victim girl, corroborated by the evidence of Witness No.4 Sgt. M.K. Singh, would show that the applicant was manhandled by Sgt. P.K. Sharma for the molestation of his daughter Miss Kavya. According to the evidence of the applicant and his wife, they approached the Junior Warrant Officer S.K. Yadav about the manhandling of the applicant by Sgt. P.K. Sharma. While the Court of Inquiry found the applicant guilty of the molestation of the girl child of Sgt. P.K. Sharma, did not reach any finding regarding the manhandling of the applicant by Sgt. P.K. Sharma, which is also a crime. The respondents have not proceeded against Sgt. P.K. Sharma for manhandling of the applicant by taking law into his own hand. The evidence of Witness No.3 and 4 would go to show that the applicant pleaded forgiveness after confessing his guilt with Witness No.3 and 4. The said circumstance was not considered by the disciplinary authority as well as the Chief of the Air Staff to reach the conclusion of slapping dismissal order against the applicant.

21. It is an admitted fact that the applicant had an unblemished service of 15 years 65 days except this incident. The intention of the administrative proceedings and the Chief of the Air Staff would be that the applicant who was not desirable to be an airman was to dismiss him. The unblemished service of the applicant was not considered while dismissing him from

service. If an order of discharge or removal from service is inflicted against the applicant, the applicant could not continue in service. The applicant, who served the Indian Air Force for 15 years 65 days with unblemished service would have been granted with the benefits accrued on his service rendered so far. The ultimate beneficiaries would be his family members. But the family members were also deprived of the benefits for no fault of theirs. Therefore, the imposing of dismissal order against the applicant is not proportionate to the guilt when it is considered in the facts and circumstances of the case. The discharge of the applicant from Indian Air Force would be sufficient. Therefore, we are of the considered view that the disciplinary authorities as well as the order of the Chief of Air Staff should have considered discharge of the applicant from service instead of dismissal and accordingly we are inclined to modify the said order of dismissal into discharge of the applicant from service. To that extent both these points are decided in favour of the applicant while maintaining the finding that the applicant was guilty of molestation of the six year old female child Miss Kavya.

22. **Point No.3:** In the earlier points, we have decided that the applicant is not entitled to challenge the finding of the impugned orders that the applicant was found guilty of the allegations made in the Show Cause Notice and the statutory complaint preferred by the applicant, but the dismissal

order passed by the respondents as confirmed by the Chief of the Air Staff was not proportionate to the guilt of the applicant and to that extent, the dismissal order was modified into discharge of the applicant from service. Therefore, the invocation of Section-20(3) of the Air Force, Act 1950 read with Rule-18 of Air Force Rules, 1969, for removal of the applicant is confirmed by us and the order of disciplinary authorities and the impugned order of the Chief of the Air Staff on the statutory complaint of the applicant are confirmed to that extent and the dismissal of the applicant alone is modified. Despite the dismissal order has been modified into removal through discharge of the applicant from service, the claim for reinstatement of the applicant into service is not grantable. Accordingly, this point is decided against the applicant.

23. **Point No.4:** In the earlier points, we have come to the conclusion that the dismissal order passed by the disciplinary authorities as confirmed by the Chief of the Air Staff in the statutory complaint are modified to that of removal from service through discharge of the applicant and the applicant was found not entitled for reinstatement. While discussing the said points, we have also found that the applicant was having unblemished service of 15 years 65 days except the present incident to which disciplinary proceedings were initiated against the applicant. Therefore, the applicant, even though discharged from service and the dismissal order passed against him is

modified to that extent, the applicant is entitled for the benefits payable for the service rendered by him for the period of 15 years 65 days. The pensionable service is 15 years and the applicant had completed the said 15 years period and, therefore, the pension and other benefits payable to the said service of the applicant shall be granted to the applicant as prayed for by him in the alternative relief. Accordingly, the applicant is found entitled to the pensionary benefits and other benefits payable to his service till the date of his removal. Accordingly, this point is decided in favour of the applicant.

24. **Point No.5:** In the earlier discussions held by us in the previous points, we have found that the dismissal order of the authorities which was confirmed by Chief of the Air Staff in the statutory complaint preferred by the applicant is liable to be modified into that of removal of the applicant from service through discharge and the applicant is not entitled for reinstatement. However, he is found entitled to the alternative relief of pension benefits. The application filed by the applicant is allowed to that extent of grant of pensionary benefits since the dismissal order is modified as removal from service through discharge. The respondents are, therefore, directed to prepare Pension Payment Order as per rules and to pay the pension payable to the applicant from the date of his discharge from service and other benefits payable to him, within a period of three months from the

date of this order. In default, the applicant is entitled to collect the amount with interest at 12% per annum from this date. In other respects, the application is dismissed. No order as to costs.

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

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

17.09.2013
(True Copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

NCS

To,

1. Union of India,
Represented by–The Chief of the Air Staff,
Air Headquarters, Vayu Bhavan,
New Delhi-110 011.
2. The Air Officer Commanding-in-Charge,
HQ Training Command IAF,
JC Nagar Post, Bangalore-560 006.
3. Commanding Officer,
WTI AF, Air Force Station Tambaram,
Chennai-600 046.
4. M/s. M.K. Sikdar & S. Biju,
Counsel for applicant.
5. Mr. B. Shanthakumar, SPC
Counsel for respondents.
6. OIC Legal Cell (Air Force),
Avadi, Chennai.
7. Library, AFT, Chennai.

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

O.A.No.35 of 2013

17.09.2013