ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.(Appeal) No.141 of 2014

Friday, the 11th day of September 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)
AND
THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

S.No.822789 K.Venkateswarlu NC(E)
C/o Mr. S.Devarajan
5/339-1, Bharathi Nagar
Kadampadi, Kangayampalayam Post
Sulur Via, Coimbatore,
Tamil Nadu-641 401. ... Applicant

By Legal Practitioners:
M/s. P.Chandra Bose & G.Swaminathan

vs.

1. Chief of the Air Staff
Vayu Bhavan, New Delhi.

2. Air Officer Commanding
Southern Air Command
Indian Air Force
Pin: 936 177, C/o 56 APO.

3. The Commanding Officer
No.43, Wing Air Force Station
Sulur, Coimbatore District
Pin-641 401.

4. The Commanding Officer
No.151, Helicopter Unit
Air Force Station, Sulur
Coimbatore District, Pin-641 401.

5. Wing Commander Bhavana Mehra
No.151, Helicopter Unit
Air Force Station, Sulur
Coimbatore District
Pin: 641 401.

6. JCDA, Subroto Park
New Delhi-110 010.

7. Sgt. Ajit
No.151, Helicopter Unit
Air Force Station, Sulur
Coimbatore District
Pin: 641 401.

8. Sgt. Vijay
No.151, Helicopter Unit
Air Force Station, Sulur
Coimbatore District
Pin: 641 401.

9. Union of India
Rep. by The Secretary
Ministry of Defence
South Block
New Delhi-110 011. .. Respondents

By G.Venkatesan, CGC
For R.1 to 4, R.6 and R.9
N.A. for R.5, R.7 and R.8

**ORDER**

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

1. This appeal is filed against the speaking order passed by the 2nd respondent in IAF letter No.SAC/C 7012/1/48/P1, dated 21.05.2013 and the removal order issued by 3rd respondent dated 03.06.2013 in dismissing the applicant from service and sought to be quashed as

arbitrary, illegal, against the principles of natural justice and to direct the respondents to re-instate the applicant into service with all consequential benefits and to pass such other further orders in the facts and circumstances of the case.

2. The brief facts which are necessary would be as follows:

The applicant was enrolled on 11.11.1993 in Air Force and was posted to several places and finally he was posted to H.U.A.F. Sulur, Coimbatore. There were no adverse remarks made against the applicant till he was removed from service on 03.06.2013. During his service, the civilians came voluntarily to the applicant and asked him to procure jobs for some persons to which the applicant declined to do so. He also told them that the applicant was after all a Lascar and it was not possible for him to procure any job to anyone in the Air Force. The civilians however planned to trap him and on that basis, the Air Force authority called the applicant to give a statement. Court of Inquiry was also conducted and no proper trial was conducted and finally the applicant was removed from service vide letter No. SAC/C 7012/1/48/P1, dated 21.05.2013 and was subsequently issued an order of Commanding Officer for the applicant's removal with effect from 03.06.2013. The applicant gave statement on the threatening of the applicant by stating that they got video recording of the applicant given to Eenadu TV to the effect that he has accepted money from

civilians and had prepared the statement of the applicant. The applicant was also afraid of the officials' words and he signed in many blank papers as provided by the Air Force officials. Apart from that, the Air Force officials deliberately and forcibly got the papers signed by the applicant containing the words in English. The said statement taken by the officials of the Air Force were dictated by the officials and were amended corresponding to the dates and therefore, the statements were null and void. The translated statements from Telugu to English were not known to the applicant and they were also null and void and cannot be accepted. During the conduct of Court of Inquiry, the Court posed questions to Witness No.1 and the answers found in page Nos.23 to 26 were not given by the applicant and therefore, be treated as null and void. The translated version from Telugu to English stated to have been given by Abdul Kareem in pages 27 to 31 was not known to the applicant and the statement said to have been given by the said Abdul Kareem should also be treated as null and void. Similarly, the additional statement said to have been given by the applicant found in pages 43 to 62, 72 to 77 are also to be treated as null and void. The Court of Inquiry proceedings were not held as per rules or as per the provisions of Para-790 (a) (b) and (c) of Regulations of Air Force and recording that the applicant declined to be present during and ensuing proceedings is totally false, because no

proceedings were held. The Witness No.2 did not attend the Court of Inquiry proceedings and this could be evidenced from the fact that his evidence was not completed on 12th June 2012 for the reason that he had to go back immediately to his home town Khammam on medical reasons. Apart from that, the Court of Inquiry proceedings were not completed immediately, but there was a period of 7 years to complete the same and therefore, limitation would bar taking any action against the applicant. Witness No.3 was not examined by Court of Inquiry, but his statement was obtained by fax and the applicant was not given any opportunity to cross-examine or questioning him. The Court of Inquiry could not come to a correct conclusion in respect of the exact amount received by the applicant whereas the Court should come to a conclusion beyond any reasonable doubt only. The video CD recorded by Enadu TV at the behest of Abdul Kareem and A.S.Rao had very little relevance to the case since considerable time had lapsed. The proceedings of the Court of Inquiry have no legs to stand and therefore, action taken on the finding under Rule 18(1) of Air Force Rules read with Section 20(1) and (3) of Air Force Act against the applicant is vitiated. The Criminal Court or Court Martial alone can initiate proceedings under Section 18(1) of Air Force Act, but the applicant was removed from service under the Court of Inquiry proceedings which is not sustainable. The removal order passed by

the respondents is not sustainable since no time was mentioned. Actually the removal order certificate was given to the applicant on 15.07.2013 and on that ground also, the removal certificate becomes invalid. The applicant was not granted any breathing time to challenge the speaking order of AOC-in-Chief since the same was handed over to him only by 1430 Hrs on 03.06.2013 which was against natural justice and Article 14 of the Constitution of India. The speaking order passed by the AOC-in-Chief on 21.05.2013 is also not sustainable and the reasons mentioned therein are legally not sustainable. Therefore, the applicant seeks for quashing the order passed by the second respondent dated 21.05.2013 directing removal of the applicant as issued by the 3rd respondent on 03.06.2013, dismissing the applicant from service and consequently to direct the respondents to re-instate the applicant into the service with all consequential benefits and thus allow the application.

3. The objections raised by the respondents in the reply statement would be as follows:

The applicant was enrolled in IAF on 11.11.1993. During his service, a Court of Inquiry was convened at Air Force Station, Begumpet on 15.05.2008 to investigate the circumstances under which the applicant met with one Abdul Kareem and A.S.Rao and to ascertain the circumstances and reasons to which the applicant got involved in

financial transactions with them during June 2005. After considering the evidence collected by the Court of Inquiry including the written statement of the applicant dated 19.05.2008 and additional statement dated 26.06.2008 submitted before Court of Inquiry, it was made out that the applicant had received money from two civilians, viz., Abdul Kareem alias Bismillah and A.S.Rao by assuring them that the applicant would procure employment for their candidates in IAF. It is also found that the said civilians initially gave the applicant Rs.1,00,000/- for getting employment for five boys and the applicant got them employed as casual labourers with the Hospital Warrant Officer at CHAF, Bangalore. The said civilians again approached the applicant and offered him money to arrange jobs for five more boys. The applicant also got them employed as casual labourers in the Air Craft, Standards and Testing Establishment through one Parmesh, a casual worker. In the meanwhile, the applicant was posted to AFAC, Coimbatore in December 2005 and the said two civilians followed him to Coimbatore and requested him to arrange permanent employment for these casual labourers. The applicant managed to employ those boys at Coimbatore as casual labourers and after working for a month, those boys dissatisfied with the job and left for Bangalore. Therefore, the two civilians started pressuring the applicant to return the money or to procure regular employment for them. According to Abdul

Kareem, a total sum of Rs.6,30,000/- was paid to the applicant on various occasions to which the applicant admitted in his written submission that he received Rs.6,00,000/- only from Abdul Kareem and A.S. Rao as illegal gratification for procuring employment for their candidates. Considering all these circumstances, the Court of Inquiry recommended disciplinary action to be initiated against the applicant for the offence under Section 66(e) of Air Force Act. Accordingly, a Show Cause Notice was served upon the applicant on 13.12.2012 requiring to submit his reply, if any, within ten days from the date of receipt of Show Cause Notice as to why he should not be removed from service under Section 20(3) of Air Force Act read with Rule 18(1) of Air Force Rules, 1969 for the act of indiscipline. The request of the applicant for ten more days to submit his reply was also granted by the competent authority and finally, he submitted a reply on 27.12.2012 in which he reiterated the facts already given by him in the Court of Inquiry. After having considered the entire facts and circumstances of the case and the reply to the Show Cause Notice, a speaking order was passed to remove the applicant from service. The applicant was allowed to make a statement in the Court of Inquiry in his mother tongue, viz., Telugu wherein he had unequivocally admitted his guilt of having received illegal gratification from Mr.A.S.Rao and Abdul Kareem @ Mr. Bismillah as gratification to procure employment.

The removal order was received by the applicant on 03.06.2013 and he was removed from Air Force rolls with effect from 04.06.2013. The contentions raised by the applicant that the Court of Inquiry proceedings were not conducted in accordance with rules and procedures is not correct. The applicant had unambiguously stated his unwillingness to cross-examine any witness before Court of Inquiry on 19.05.2012. The applicant had also admitted the guilt of having taken money from two civilians, i.e., Abdul Kareem and A.S. Rao amounting to Rs.6,00,000/- and knowing full well that severe disciplinary action may be taken against him, he did not want to make further submissions or to produce any witness in his favour or to cross-examine any witness. He had also stated that the final statement given by him was on his own without any one's pressure. The applicant was administratively removed from service under Section 20(3) and the Air Force Act, 1950 read with Rule 18(1) of Air Force Rules, 1969 and the said provisions were correctly followed on the basis of the findings of Court of Inquiry and therefore, the applicant was dismissed from service without any punishment despite the said act of the applicant was punishable under Section 66(e) of Air Force Act. The applicant's removal from service is as per provisions of prescribed rules and regulations and therefore, his prayer for re-instatement in service is liable to be rejected being devoid of merit.

Therefore, the respondents pray that the application be dismissed as devoid of merit.

4. The applicant has filed a rejoinder in which the facts which have been stated in the application have been reiterated as answering the objections raised by the respondents in their reply statement.

5. On the above pleadings, we find the following points emerged for consideration:

*(1) Whether the Court of Inquiry proceedings were conducted by the respondents in accordance with the rules envisaged in Air Force Act, rules and regulations for the Air Force?*

*(2) Whether the Court of Inquiry proceedings are vitiated for the reasons stated by the applicant?*

*(3) Whether the dismissal proceedings initiated against the applicant was in order as contemplated under Section 20(3) of Air Force Act 1950 read with rule 18(1) of Air Force Rules 1969?*

*(4) Whether the applicant is entitled for re-instatement into service and related benefits accrued thereon?*

*(5) To what relief the applicant is entitled for?*

6. We heard the arguments of P.Chandra Bose, learned counsel for the applicant and Mr. G.Venkatesan, learned CGC For R.1 to 4, R.6 and

R.9 assisted by Wing Commander D.K. Tyagi, Legal Cell, Air Force, Chennai, appearing for the respondents-1 to 4, 6 and 9. The other respondents-5, 7 and 8 remained absent.

7. **Point Nos.1 and 2**: The applicant was enrolled in Air Force on 11.11.1993 and during his service in Air Force, a Court of Inquiry was conducted against him for the offence, under Section 66(e) of Air Force Act for receiving a sum of Rs.6 lakhs from Abdul Kareem and A.S.Rao as illegal gratification for procuring employment for their candidates. The Court of Inquiry after due deliberation recommended disciplinary action to be taken against the applicant for the said offence under Section 66(e) of Air Force Act for accepting money to the tune of Rs.6 lakhs from civilians as gratification on a promise to procure employment of their candidates in the Indian Air Force. Accordingly, a Show Cause Notice was issued to the applicant on 13.12.2012 directing him to submit his reply within ten days and however, the said time was extended at the request of the applicant and within the extended time, the applicant had submitted his reply to the Show Cause Notice and the same was perused but not accepted and consequently, the applicant was dismissed from service, under Section 20(3) of Air Force Act 1950 by the competent authority. A speaking order was also passed by the competent authority in which the applicant was removed from service under Section 20(3) of Air Force

Act read with Rule 18(1) of Air Force Rules, 1969. The applicant has now challenged the conduct of Court of Inquiry as well as the disciplinary proceedings taken against him.

8. The learned counsel for the applicant would submit in his argument that the removal order certificate issued to him under Section 20(3) of Air Force Act was not valid in law since it should be in the mother tongue of the applicant as well as in English. Apart from that, it should be a Certificate of Termination and not the Removal Certificate as mentioned in the said certificate. He would also submit that the applicant even though stated to have been removed from Indian Air Force on 03.06.2013, he was served with the removal certificate only on 15.07.2013 and therefore, he should have been deemed in service till that date. Therefore, the Removal Order Certificate is not valid. He would also submit that the Court of Inquiry was not conducted in accordance with rules wherein charge should have been framed as per Air Force Rules 34 and on the basis of the said Charge Sheet, the evidence should be recorded and findings must be given. The various rules contemplated from rules 34 to 119 of Air Force Rules have not been complied with and on that score alone, the Court of Inquiry should have been set aside. Any statement of the accused given in the Court of Inquiry proceedings shall not be admissible in evidence against him as per Section 156 and Para-6 of

the Air Force Rules 1969 and even otherwise, the said statement said to have been made by the applicant was not voluntary, but was under pressure. He would also submit that the applicant alone could not commit the offence alleged against him, viz., the procuring of job for anyone in the Air Force and someone should also behind him which should have been gone into by the Court of Inquiry, but it failed to do so. Therefore, findings of the Court of Inquiry cannot be relied upon by the respondents for the purpose of issuing any Show Cause Notice against the applicant. He would also submit that the reply to the Show Cause Notice was actually written by one Wing Commander Ms. Pavana Mehra to which the applicant simply signed and the statement of the applicant said to have been given before Court of Inquiry were detected by higher authority and the contradiction found in the said statement would go to show that it was not given by the applicant. He would further submit that the sentence passed against any individual should have been confirmed by the concerned authorities, viz., Union of India, otherwise it would not be valid. He would also submit that the Air Force Act itself is not applicable against NC (E) wherein it is mentioned about the officers and Airmen only. If at all it is to be deemed as civil offence and it should have been tried by a criminal Court and the Court of Inquiry has no jurisdiction to entertain the matter. He would also submit that the applicant in fact did not

receive any money from anybody nor gave any statement before Court of Inquiry or in Air Force Station. He would also submit that there are no such persons called Abdul Kareem alias Bismillah and A.S. Rao whom they paid monies to the applicant. He would also submit that under Rule 18(1) of Air Force Rules any dismissal or removal of Airmen should be done through any conviction of criminal Court or a Court Martial only. Even otherwise, the respondents did not follow the procedures contemplated under Rule 18(e) of Air Force Rules regarding submitting report to the Central Government and therefore, the termination itself is not valid. The speaking order passed by the competent authority was issued on 03.06.2013 at about 1500 Hrs without giving any breathing time to act after handing over the removal order. The signatures of the applicant were obtained by force and undue influence and the statements were prepared in English to which the applicant was not accustomed. The cross-examination of Witness No.2 was not possible owing to the ill-health of the witness and the witness should have been cross-examined only in Telugu, but was cross-examined in English which was not known to the applicant. He would also submit that the said named witness Abdul Kareem did not come to Court to attend the proceedings. All these names given in the Court of Inquiry are imaginary and concocted stories. The report of the Court of Inquiry stating that all the witnesses could not be

examined due to non-availability would go a long way to show that the evidence of those witnesses are concocted and colourful stories only. The examination of one H.F.O. R.K.Saini who had not attended for cross-examination and the alleged fax sent by him would not make his evidence reliable. The findings of the Court of Inquiry was not finalized on any logical conclusion. He would also submit that the applicant being a Telugu speaking man and nowhere has he signed stating that he signed after he read and understood the contents. The Court of Inquiry did not summon the witnesses nor knew the addresses of the witnesses much less the address of A.S. Rao. Even otherwise, there was a gap of seven (7) years to complete the Court of Inquiry and the limitation period was already over. The Court of Inquiry being a Court should have come to a conclusion beyond any reasonable doubt, but it did not find anything against the applicant beyond reasonable doubt. The reply to Show Cause Notice was also made in English whereas the applicant's mother tongue was Telugu and he did not know the contents of the Show Cause Notice as well as the reply made therein. He would also submit that the speaking order passed thereon is not sustainable as the applicant did not know the contents of the Show Cause Notice as well as reply. He would therefore submit that the speaking order issued by HQ Southern Air Command dated 21.05.2013 be treated as invalid and the Removal

Order dated 30.06.2013 handed over to the applicant on 15.07.2013 may be cancelled and the applicant be re-instated in service with all benefits.

9. Per contra, the learned Central Government Counsel would argue that on the allegations made against the applicant in respect of receiving illegal gratification from one Mr.A.S. Rao and Kareem alias Bismillah to procure employment in Air Force, a Court of Inquiry was constituted to enquire into the offence committed by the applicant and the Court of Inquiry had examined the witnesses including the applicant himself and Court of Inquiry had submitted its report after seven (7) years with a finding that the applicant had committed an offence under Section 66(e) of Air Force Act. The Court of Inquiry was duly constituted for the purpose of finding out the fact regarding the allegations made against the applicant and the statement submitted by the applicant would be sufficient to hold that the applicant was guilty. He would also submit that one of the witnesses who parted with money had deposed against him and yet another witness did not attend the Court of Inquiry and therefore, the finding of Court of Inquiry were given on the available evidence recorded by it. He would further submit that the applicant voluntarily gave statement in his mother tongue Telugu to which he signed in the presence of the Presiding Officer and other attendant officers and therefore, he cannot

turn round and say that he was compelled to sign in the statement written by somebody else. He would also submit that the procedures to be followed by the Court of Inquiry were correctly followed and sufficient opportunity was given to the applicant to cross-examine the witnesses to which he did not avail but the Court posed questions to the witnesses to clarify the evidence. He would also submit that the Court of Inquiry being a fact-finding body need not frame any charge-sheet for the purpose of launching proceedings against the applicant before any Court Martial. He would further submit that the competent authority can take disciplinary action on the finding of the Court of Inquiry which is a fact-finding authority or to refer to Summary Court Martial, in accordance with law. In this case, the competent authority decided to pursue the matter on disciplinary ground to issue Show Cause Notice, under Rule 18(1) of Air Force Rules 1969 read with Section 20(3) of Air Force Act to which the applicant received and submitted a reply admitting the guilt and sought for mercy. He would also submit that the respondents did not proceed against the applicant any Court Martial under Section 66(e) of Air Force Act and there is no question of limitation for taking action against the applicant on disciplinary grounds. The competent authority had considered the findings of the Court of Inquiry and the reply given by the applicant to the Show Cause Notice and come to the conclusion of removing the

applicant from service. The speaking order passed by the competent authority is also lawfully sustainable and the applicant who was receiving illegal gratification for procurement of jobs in Air Force cannot continue in service. He would also submit that the applicant cannot shift the burden on others with regard to filing the reply to the Show Cause Notice, since he himself signed in the reply seeking mercy. He would further submit that the argument of the learned counsel for the applicant that the Court of Inquiry was vitiated for not following the procedure cannot be sustained and even otherwise, the competent authority can issue Show Cause Notice stating certain allegations against the applicant and on the reply given by the applicant, it can pass an order on disciplinary grounds. He would therefore submit that the applicant is not entitled for re-instatement after setting aside the removal order passed against him.

10. We have also perused the written arguments submitted on the side of the applicant. We have given our anxious thoughts to the arguments advanced on either side.

11. We have perused the Court of Inquiry proceedings constituted against the applicant. The said Court of Inquiry proceedings were adopted as per Rules 154 and 156 of the Air Force Rules, 1969 in order to ascertain the facts referred by the officer and to file its report to the officer concerned who assembled the Court for taking further

action. As submitted by the learned counsel for the applicant, the provisions commencing from Rule 34 to 119 would not apply to a Court of Inquiry constituted for the purpose of ascertainment of certain facts. Those referred provisions are in respect of investigation of parties and the trial to be conducted by Court Martial. Any charge should have been prepared under those provisions only for the purpose of investigation of those charges, wherein the Court of Inquiry constituted under Rule 154 would be only for ascertaining the facts referred to it and to submit its report to the officer who referred the same. Therefore, the whole argument advanced by the learned counsel for the applicant with regard to the unsustainability of the Court of Inquiry for not following the procedure contemplated as per rules 34 to 119 falls to the ground.

12. However, on going through the enquiry done by the Court of Inquiry, we find that the applicant had given a statement in Telugu whereas he said that he was not aware of English and hence giving statement in English would vitiate the proceedings. There is no dispute that he was present throughout the Court of Inquiry as per the provisions of 790 of Regulations for the Air Force. The statement given by the applicant himself would go to show that he had received monies from civilians, viz., S.A. Kareem alias Bismillah and A.S. Rao for procuring jobs for their candidates. The unequivocal admission

made by the applicant in his statement was supported by one of the witnesses, viz., S.A.Kareem that he had paid money to the applicant and provided the job of casual labourers for his candidates and when he pressed for permanent job, disputes arose between them. Such an evidence given by S.A.Kareem would corroborate the statement of the applicant where he had admitted his guilt of receiving illegal gratification for procuring jobs in Air Force to the civilians. Whether the amount received by the applicant was Rs.6,00,000/- or Rs.6,30,000/- or any less sum, the fact of illegal receipt of money by the applicant from civilians have been proved. The non-examination of other witnesses so as to corroborate the remaining part of payment of money to the applicant would not in any way vitiate the finding of Court of Inquiry that the applicant had received illegal gratification for procuring jobs in Air Force. The applicant was given opportunity to do cross-examination of the witnesses examined to which he had not availed, however, the Court posed questions and clarified regarding the facts to be found. On the available materials placed before Court of Inquiry, the findings were given to the officer referred. The constitution, its entire proceedings and conduct of Court and the findings reached have been found in order and it was promptly submitted to the officer concerned.

13. Now, it is for the officer who referred the facts to the Court of Inquiry to go through the findings of Court of Inquiry and either to refer to the Court Martial or to take disciplinary proceedings against the applicant. No doubt the Court of Inquiry was held for about seven (7) years. The learned counsel for the applicant raised the plea of limitation for initiating proceedings under Section 66(e) of Air Force Act since the criminal action is barred by law of limitation. In this case, no criminal action has been initiated against the applicant by convening any Court Martial, whereas action is initiated against the applicant to proceed under Section 20(3) of Air Force Act coupled with Rule 18(1) of Air Force Rules 1969.

14. Accordingly a Show Cause Notice was issued by the competent person to which the applicant received and replied during the extended period. On going through the reply to the Show Cause Notice given under Rule 18(1) of Air Force Rules 1969, a reply has been filed in English which is stated to have been prepared by one Ms. Pavana Misra and the applicant was stated to have no knowledge about the contents of the same. There was no denial from the side of the applicant with regard to his signature found therein. Therefore, it cannot be said that the applicant was not aware of the contents of the reply given to the Show Cause Notice especially when he asked for extension of time for submitting a reply to the Show Cause Notice

issued. Therefore, the contentions raised by the learned counsel for the applicant that the reply to the Show Cause Notice was not known to him would not hold water.

15. On a careful perusal of the reply to the Show Cause Notice, the applicant has categorically admitted to the conduct of Court of Inquiry and his participation in the said Court of Inquiry. He would also admit that the parents of the children to whom he promised to employ them in IAF beat him and obtained signatures in bond papers and cheques. This would go to show that he had indirectly accepted the offence committed by him as found by the Court of Inquiry. In his reply to Show Cause Notice, he would also plead mercy for not being punished for the said offence. In Paragraph-12 of the reply, he had also categorically admitted that he became greedy for the money and he was trapped in a vicious plot. Apart from that, he had also admitted in various paragraphs in respect of his contact with Kareem alias Bismillah and A.S. Rao from whom he had received money. All these would categorically show that the findings of Court of Inquiry against the applicant are depicting truth and the Show Cause Notice issued was promptly in order. On the basis of his reply, speaking order was passed by competent authority on 21.05.2013. We have also perused the said speaking order in which the Air Officer Commanding-in Chief, Southern Command, IAF had discussed each and every point on merit

and had come to the conclusion that the applicant be removed from service since his misconduct was serious and grave in nature besides tarnishing the image of the organization and also prejudicial to the good order and discipline of Air Force. However, while considering the removal of the applicant from service, the competent authority did not look into the submissions towards mercy and the grounds raised by the applicant to that effect. The applicant in his reply to Show Cause Notice stated that he was detected with HIV infection and he has got a family comprising his wife and two daughters who were then studying in X standard and VIII standard in Kendriya Vidyalaya. On his dismissal, they would be left in lurch and there would be no one to take care of them and no security would be available and his family would ruin. The applicant sought for deviation from imposing punishment and not to be removed from service. No doubt, the fact-finding authority found the applicant guilty of receiving illegal gratification for the permanent jobs to civilians and the applicant was responsible for committing an offence under Section 66(e) of Air Force Act. The officer referred to Court of Inquiry had not ordered the applicant to go for Court Martial proceedings for some reasons which is certainly beneficial to the applicant. By virtue of taking disciplinary action, the applicant had been removed from service and no punishment of any imprisonment or fine was imposed against him.

However, the competent authority, viz., Air Officer Commanding-in-Chief, Southern Command, IAF could have considered the facts and circumstances pleaded by the applicant on compassionate grounds and should have ordered a discharge instead of dismissal from service. There is no difference between dismissal and discharge since in both, the applicant cannot continue in service to tarnish the image of the organization. The applicant had almost served the nation from 1993 to 2013 for about 20 years which includes his non-pensionable service. By virtue of removing or dismissing the applicant from service, the ultimate sufferers would be his family members who would be deprived of the benefits, for no fault of theirs. Therefore, imposing punishment of dismissal or removal against the applicant would not serve any purpose. Furthermore, the applicant is said to be a HIV patient to which the respondents had not denied. Therefore, we feel that the discharge of the applicant from Indian Air Force would be a sufficient order taken through disciplinary proceedings. Considering the gravity of the offence, we do not find any reason to re-instate the applicant in service, despite the order is modified to discharge of the applicant instead of dismissal. Accordingly, we are inclined to modify the said order of dismissal or removal into an order of discharge of the applicant from service and the claim of re-instatement is not granted. Accordingly, all the points are decided.

16. **Point No.5**: In view of our discussions held above, we find that the Court of Inquiry proceedings and the disciplinary proceedings initiated against the applicant are in order except with regard to the findings reached by the competent authority in the speaking order to remove/dismiss the applicant from service. We also find that the applicant be discharged from service instead of dismissal. The application filed by the applicant to set aside the entire proceedings of Court of Inquiry and disciplinary action and re-instatement into service is therefore liable to be dismissed except for the modification of the order of dismissal or removal into that of discharge. The application is allowed to that extent only. Accordingly, the applicant shall be entitled to all the benefits accrued to him on the modification of the dismissal from service into discharge from service. The arrears of such benefit shall be paid within a period of three (3) months from this date. Failing to comply, the respondents are liable to pay the said arrears with interest at 9% p.a. till it is fully paid. No order as to costs.

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| Sd/ | Sd/ |
| LT GEN K. SURENDRA NATH | JUSTICE V.PERIYA KARUPPIAH |
| MEMBER (ADMINISTRATIVE) | MEMBER (JUDICIAL) |

**11.09.2015**
**(True copy)**

**Member (J)** – Index : Yes/No Internet : Yes/No
**Member (A)** – Index : Yes/No Internet : Yes/No
*VS*

To:

1. Chief of the Air Staff
Vayu Bhavan, New Delhi.

2. Air Officer Commanding
Southern Air Command
Indian Air Force
Pin: 936 177, C/o 56 APO.

3. The Commanding Officer
No.43, Wing Air Force Station
Sulur, Coimbatore District
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6. JCDA, Subroto Park
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8. Sgt. Vijay
No.151, Helicopter Unit
Air Force Station, Sulur
Combatore District
Pin: 641 401.

9. The Secretary
Ministry of Defence
South Block
New Delhi-110 011.

10. M/s. P.Chandra Bose & G.Swaminathan
Counsel for applicant.

11. Mr. G.Venkatesan, CGC
Counsel for respondents-1 to 4, 6 and 9

12. OIC, Legal Cell,
Air Force, Chennai

13. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.(A)141 of 2014

Dt: 11.09.2015