

(2016) 02 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : LPASW No. 09 of 2003, MP No. 15 of 2003 C/w LPASW No. 92-S of 2008

R.K. Rana (Sqn. Ldr.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Air Force Act, 1950 — Section 19

Air Force Regulations, 1964 — Regulation 25, Regulation 578, Regulation 579

Air Force Rules, 1969 — Rule 16

Citation : (2016) 3 JKJ 142

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Bansi Lal Bhat, J.

Bench : Division Bench

Advocate : Mr. U.K. Jalali, Sr. Advocate With Mr. Anuj Sawhney, Advocates, for the Petitioner; Mrs. Sindhu Sharma, ASGI, for the Respondent

Final Decision : Dismissed

Judgement

Bansi Lal Bhat, J. - Squadron Leader R.K. Rana serving in Indian Air Force came to be compulsorily retired by Central Government in terms of

order dated 11.04.2000. He assailed the impugned order dated 11.04.2000 together with show cause notice dated 19.06.1995 calling upon him

to show cause as to why he should not be dismissed from service. The writ petition (SWP No. 412/2000) filed by the appellant-delinquent officer

R.K. Rana (hereinafter referred to as ""delinquent officer"") came to be disposed of in terms of judgment rendered by learned Writ Court on

15.11.2002, by virtue whereof writ petition, so far as it challenged the show cause notice and the order of compulsory retirement of the delinquent

officer was dismissed. However, delinquent officer was held entitled to the pension and gratuity in terms of the regulations framed under the Air

Force Act. Arrears of pension and gratuity were directed to be released in favour of the delinquent officer within a period of three months from the date of receipt of the order, failing which it would carry interest at the rate of 12% per annum from the expiry of three months till payment was actually made.

2. Aggrieved of the judgment of the learned writ Court, both the parties viz. Union of India as also delinquent officer preferred appeals registered as LPASW No. 09/2003 and LPASW No. 92-S/2008 respectively. Since both the appeals arise out of common judgment inter se the parties, we heard the appeals together and propose to dispose of the same by formulating a common judgment.

3. The delinquent officer started his career as a Pilot when he was commissioned in the Indian Air Force on 15th June, 1980. He rose to the rank of Squadron Leader-the position that he held at the time of passing of the impugned order of his compulsory retirement. On 23rd July, 1993 one

Lt. Almas Bano filed a complaint alleging therein that the delinquent officer had converted to Islam on 17th March, 1984 and contracted marriage

with her as per Islamic rites. She also alleged that a male child was born out of such wedlock on 22nd July, 1984 at Military Hospital,

Ahmedabad. In the complaint it was also alleged that delinquent officer again married one Sangeeta Sehgal according to Hindu rites on 3rd

October, 1990. A Court of Inquiry was constituted to enquire into the complaint. Witnesses were examined to establish factum of marriage

between the delinquent officer and Almas Bano and the factum of a male child born out of said wedlock. Some of the witnesses were cross-

examined by the delinquent officer. The Court of Inquiry found that the delinquent officer, while admitted in Command Hospital (Eastern

Command) Kolkata in 1981-82, came in contact with Almas Bano and on 17th March, 1984 he embraced Islam and married Almas Bano as per

Islamic rites. The Court of Inquiry also found that a male child was born out of such wedlock on 22nd July, 1984 at Military Hospital,

Ahmedabad; that the delinquent officer had not informed the Air Force authorities regarding his conversion to Islam; that on 3rd August, 1990 he

sought permission to marry Sangeeta Sehgal and got married to her on 3rd October, 1990 according to Hindu rites; and that on 23rd July, 1991 a

female child was born out of such wedlock. The Court of Inquiry concluded that the second marriage of petitioner was illegal and female child born out of such wedlock was illegitimate. The findings of Court of Inquiry were placed before the Chief of Air Staff who was of the view that the trial of delinquent officer by Court Martial was inexpedient and impracticable. However, he formed an opinion that further retention of the delinquent officer in service was undesirable. Accordingly, the Chief of Air Staff directed that a show cause notice be issued to the delinquent officer as to why he be not dismissed from service. The delinquent officer failed to reply despite several extensions and finally informed the Air Force authorities that he had filed a civil suit against Almas Bano for restraining her to claim herself as his wife. He also obtained a stay order from Munsiff Shillong directing Air Force authorities not to proceed with the show cause notice. The ex-parte stay order granted by Munsiff Shillong subsequently came to be vacated. The delinquent officer was again asked to submit his reply, however, he did not submit reply on the pretext that the matter was sub-judice. The matter was placed before the Chief of Air Staff, who after consideration recommended to Central Government that the delinquent officer be retired from service. That is how the order of compulsory retirement of the delinquent officer came to be passed.

4. Union of India is aggrieved of the impugned judgment dated 15.11.2002 on the ground that despite upholding order of compulsory retirement of the delinquent officer, the learned writ Court has directed release of pension and gratuity in his favour. It is contended that once the delinquent officer's removal from service has been upheld, forfeiture of pension under Para 16 of Pension Regulations, 1961 comes into play on that score. It is further contended that the delinquent officer cannot be brought within the purview of 'Late Entrant' for the purposes of granting pensionary benefits and impugned judgment cannot be sustained.

5. The delinquent officer has assailed the impugned judgment on the ground that the writ Court has not adjudicated upon the competence and jurisdiction of the Chief of Air Staff in issuing show cause notice to the delinquent officer. It is contended that the Court of Inquiry report was to be considered as a whole by the learned writ Court to appreciate that the delinquent officer was punished on no evidence or very fragile evidence. It

is further contended that the delinquent officer has been compulsorily retired just one month and 27 days before completion of the qualifying

service of 20 years for pension. It is also contended that for allegations of bigamy or plural marriage, the delinquent officer was either to face trial

before the Matrimonial Court or was to be tried by the Court Martial and the Regulation 578-F which obviates the need of holding Court martial in

matrimonial matters is ultra vires and liable to be struck down. It is contended that the delinquent officer has unblemished service record and great

prejudice has been caused to him as writ Court has relied upon the finding of Court of Inquiry to formulate the impugned judgment.

6. We have given our thoughtful consideration to the rival contentions of learned counsel for the parties and perused the record.

7. It is not in controversy that no disciplinary action by way of trial by Court Martial or under Section 82 or 86 of the Air Force Act is permissible

if an officer subjected to Air Force Act contracts bigamy or plural marriage while having a spouse living. This is the mandate of Para 578 of the Air

Force Regulations, 1964 which provides that only administrative action for termination of his services under Sections 19 or 20 of Air Force Act,

will be taken. However, if a case of plural marriage has been brought before a criminal or civil Court, no administrative action will be taken until

such matter is finally disposed of by the Court. An officer subject to Air Force Act, even if permitted by personal law to contract plural marriage,

cannot be permitted to do so without prior sanction of the Central Government. This is provided in Para 579 of the Air Force Regulations, 1964.

If such officer contracts plural marriage without requisite sanction, only administrative and not a disciplinary action would be warranted.

Termination of service by Central Government is provided in Section 19 of the Air Force Act, 1950. The procedure laid down in Rule 16 of Air

Force Rules, 1969 is required to be followed for invoking such power. Punishment by way of dismissal or removal from service for mis-conduct

can be slapped only after providing opportunity of being heard to the officer and it is to be ensured by issuing a show cause notice. However, the

notice can be dispensed with where an officer has been convicted by a criminal Court or the Central Government is of the opinion that for reasons

to be recorded in writing, it is not expedient or reasonably practicable to do so. If Chief of Air Staff, on consideration of reports of an officer's

misconduct, is of the opinion that the trial of an officer by way of Court Martial is inexpedient or impracticable, but his further retention in service is undesirable, he is required to inform and furnish the reports adverse to him to seek his explanation in defence within a reasonable period. If no explanation is offered or such explanation is not found satisfactory, the Chief of Air Staff is required to submit to the Central Government the report against the officer with his explanation, if any, together with his recommendation for dismissal or removal from service. The Central Government is empowered to take a decision thereon and dismiss or remove such officer from service. The Chief of Air Staff may recommend that instead of removing an officer from service, he may be compulsorily retired or called upon to resign his commission. A conjoint reading of this provision would lay bare that a delinquent officer having contracted plural marriage without prior sanction of the Central Government would not be subjected to disciplinary action, he is only liable to be dismissed or removed from service or to be retired at the discretion of Chief of Air Staff.

8. It was contended before the writ court and before this Court as well that the impugned show cause notice and order of retirement of the delinquent officer cannot be sustained as the same are based only on the findings of the Court of inquiry. It is contended that reasonable opportunity of being heard was denied to the delinquent officer and no opinion in regard to mis-conduct of delinquent officer can be framed on the basis of findings of the Court of inquiry. Learned writ Court did not find any merit in the aforementioned contention raised by the learned counsel for the delinquent officer. After noticing paragraph 578 and 579 of the Air Force Regulations, 1964, it ruled that no disciplinary action by way of trial by Court Martial could be initiated against the delinquent officer, even where after investigation it is found that the delinquent officer has contracted plural marriage without sanction of the Central Government. It was also of the view that aforesaid regulations read with Section 19 of the Air Force Act and Rule 16 of Air Force Rules would enjoin upon the competent authority to order dismissal or removal of such delinquent officer from service, after following the procedure laid down in Rule 16 of Air Force Rules, 1969.

9. It emerges from record that an investigation ensued after receipt of complaint from Almas Bano in which several witnesses including Sqn. Ldr.

R.K. Rana, Major (Mrs.) Almas Bano, Flt.Lt. E. Anthony, MWO Abdul Wahab, Sh. Choudhary Sarfuddin, WG. Cdr. V.K. Kapoor, Lt. Col.

S.C. Adiseshiah, Sh. Rashid Mushir Kidwai, Moulvi Mohd. Hussain Shamas Aivi, Colonel (Retd.) K.C. Roy and Smt. Quresha Begam were

examined. Some of the witnesses were subjected to cross-examination by the delinquent officer who, later, dis-associated himself from the inquiry

proceedings. Inquiry proceeded notwithstanding non-corporation from the delinquent officer. Material was brought on record which included

proof regarding factum of existence and validity of marriage inter-se the delinquent officer and Almas Bano and child having been born out of the

said wedlock. The record of Court of Inquiry is voluminous and runs into more than 600 pages as noticed in the writ Court judgment. On

appreciation of the material assembled during proceedings of Court of Inquiry, findings as noticed in earlier part of this judgment, were recorded.

Therefore, contention that the show cause notice and compulsory retirement orders are based on the inconclusive proceedings of the Court of

Inquiry cannot be countenanced. The delinquent officer voluntarily withdrew from the Court of Inquiry and he cannot blame anybody for his own

conduct. The Court of Inquiry proceeded despite non-corporation from the delinquent officer as the rule position engrafted in Rule 16 (6) of the

Air Force Act, permits such course to be adopted. The impugned order of compulsory retirement is, thus, found to be flawless. Constitutional

safeguards provided under Article 311 of Constitution are not attracted to the case of the delinquent officer who was subject to Air Force Act.

The procedure mandated under Section 19 of the Air Force Act, Rule 16 of Air Force Rules and Paras 578 and 579 of the Air Force Regulations

has been adhered to and there is no breach of any statutory provisions, Rule or regulations.

The contentions raised have been rightly repelled by the learned Writ Court. Rule 16 was complied by issuing show cause notice to the delinquent

officer calling upon him to show cause against his dismissal or removal from service. Chief of Air Staff after considering the report of Court of

Inquiry was of the view that the mis-conduct proved against the delinquent officer did not warrant trial by the Court Martial and further retention of

the delinquent officer was undesirable. The delinquent officer was put on notice and all material adverse to him was supplied to him for his

explanation. Despite liberty of opportunity, delinquent officer failed to submit a satisfactory reply, which prompted the Chief of Air Staff to

recommend compulsory retirement of delinquent officer from service. The rules and procedure were strictly followed and there was no breach of

procedural safeguards. The learned writ Court was rightly of the view that neither the show cause notice could be said to be illegal nor the order of

compulsory retirement was in violation of the provisions of Air Force Act or rules and regulations framed thereunder.

10. Learned counsel for the delinquent officer could not produce any material to demonstrate that the status of delinquent officer viz-a-viz Almas

Bano was called in question before any Court of competent jurisdiction. It appears that before the learned Writ Court material was brought on

record to establish claim of maintenance by Almas Bano and the child against the delinquent officer. It being so, there was no legal impediment in

proceeding with the Court of Inquiry and concluding the proceedings which culminated in compulsory retirement of the delinquent officer.

11. We are of the considered view that there is no merit in the contentions raised on behalf of the delinquent officer. We are equally of the view,

that the learned writ Court judgment holding the delinquent officer entitled to pension and gratuity in terms of Air Force Regulations does not suffer

from any legal infirmity. Admittedly, the delinquent officer had not put in qualifying service of 20 years which was just short of 64 days. In terms of

Regulation 25 an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years' commissioned service

qualifying for pension but whose total qualifying service is less than 20 years is to be considered as 'Late Entrant'. The delinquent officer would,

accordingly, be entitled to pension for the period he has served the Air Force. The contention raised by learned counsel for the Union of India to

the contrary is, accordingly, repelled.

12. We find no merit in the instant appeals and the same are, accordingly, dismissed.

13. Union of India is directed to release the pension and gratuity in favour of the delinquent officer within a period of three months from the date of

this judgment, failing which they shall be liable to pay interest at the rate of 12% per annum from the date of expiry of three months till the payment

is made.

Editor Note : By Order No. APLPA 15/2016, dated 31.3.2016, the name of the appellant be read as Sqn. Ldr. R.J. Rana instead of Sqn. Ldr.

R.K. Raina in order dated 15.2.2016 in LPASW No. 09/2003.