

**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**T.A. No.675 of 2009**

**W.P.(C) No.4189 of 2000 of Delhi High Court**

**IN THE MATTER OF:**

**Ex. Flying Officer K.S. Pathak**

**.....Applicant**

Through : Mr. A.K. Vali, counsel for the applicant with applicant in person

Versus

**Union of India and Others**

**.....Respondents**

Through: Mr. Ajai Bhalla, counsel for the Respondents with Wg. Cdr. Ashish Tripathi

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 30.08.2011**

1. The applicant/petitioner filed above mentioned writ petition before the Hon'ble Delhi High Court challenging the order of compulsory retirement dated 08.06.1998 (**Annexure P-11**) with the prayer that he be reinstated in service with all consequential benefits. He has also challenged the order dated 12.04.1999 (**Annexure P-14**) passed by respondent No.1 forfeiting 25% of his pension and prayed for granting all consequential benefits. Thereafter, the writ petition was transferred to this tribunal on its formation vide order dated 21.10.2009.

2. Brief facts of the case are enumerated in the foregoing paras.

3. The applicant joined Indian Air Force as an Airman on 15.11.1962 and was Branch Commissioned as an officer in Indian Air Force on 01.02.1992. It is submitted that the son of the applicant Ex. Flying Officer Vinod Pathak also served Indian Air Force. Further it is submitted that one Flying Officer Rajeev Jha of Bhagalpur recommended a girl, namely, Ms. Sujata Mishra daughter of respondent No.4, Mrs. Meera Chaudhary from Bhagalpur, Bihar for marriage with the son of the Applicant. In July, 1994 engagement of the son of the applicant with Sujata Mishra was finalised and an engagement ceremony was held. It is further submitted that due to the reasons stated by Mrs. Meera Chaudhary that horoscopes were not matching ultimately marriage could not be finalised and it was called off. The applicant has submitted that on 18/19 January, 1996 applicant returned items which were received at the time of engagement along with an amount of Rs.30,000/- was also given as compensation towards the expenditure incurred during engagement and video recording.

4. It is also submitted that MWO S.K. Pandey (retd.), respondent No.5, telephoned applicant on 18.03.1996 and requested the applicant to meet him for discussing the matrimonial alliance of his daughter Kumari Ashu Pandey with the son of the applicant Ex. Flying Officer Vinod Pathak. It is further submitted that they assembled and

discussed with regard to marriage proposals and agreed that it was subjected to final approval by Vinod Pathak after seeing the girl's personality. It was submitted that tentative dates for the various ceremonies like engagement ceremony on 28.03.1996 and for final marriage on 20.04.1996 were also fixed. It is stated that due to disapproval of girl by his son Vinod Pathak again the marriage could not take place.

5. The applicant further submitted that after the cancellation of the marriage alliance with Sujata Mishra her mother Mrs. Meera Chaudhary on 19.06.1996 filed a written complaint (**Annexure P-2**) against the applicant and his son Vinod Pathak to the Chief of Air Staff (respondent No.2) complaining that applicant and his son demanded huge amount of cash and jewellery as dowry. In complaint it was blamed that money and jewellery given by her to the applicant during the negotiation of the marriage had not been returned by the applicant and his son. It was contended by the applicant that respondent No.4, Mrs. Meera Chaudhary, called off the marriage at her own free will and she made a false complaint.

6. It was submitted that respondent No.5 MWO (Retd.) S.K. Pandey father of Ms. Ashu Pandey with whom marriage of the son of applicant was proposed also filed a complaint (**Annexure P-1**) on a fabricated plea that the applicant demanded a Maruti car as dowry.

This complaint dated 09.04.1996 was filed prior to the complaint (**Annexure P-2**) filed by respondent No.4 Meera Chaudhary.

7. It is contended that respondent No.4, Meera Chaudhary, after filing complaint (**Annexure P-2**) also lodged an FIR bearing No.1155/1997 on 22.05.1997 under 420 IPC read with Section 3/4 of Dowry Prohibition Act, 1961 at Bhagalpur. During investigation it is alleged that the applicant was arrested 29.11.1997 and remained in custody for 56 days. Thereafter, he was released on bail (**Annexure P-15**). His wife and son were also made involved in that case and thereafter they were granted anticipatory bail on condition of depositing Rs.75,000/- (**Annexure P-16**). It is contended that the case was challaned in Court and finally the applicant was acquitted in criminal case vide judgment dated 09.05.2000 (**Annexure P-17**).

8. It is contended that on the written complaints by respondent Nos.4 & 5 against the applicant a Court of inquiry was initiated on 16.08.1996. It is alleged that the allegations made in complaint was nothing to do with the applicant as Airman and were all of civil nature.

9. The applicant challenged the jurisdiction of Court of inquiry, but in Court of inquiry he was found blameworthy for the alleged misconduct (**Annexure P-6 & Annexure P-7**). On 08.11.1996 the Court of inquiry gave their finding (**Annexure P-8**) and on the basis of that finding a show cause notice was issued on 04.06.1997 (**Annexure P-9**) as to why he should not be dismissed/removed from the services

under Section 19 of the Air Force Act, 1950 read with Rule 16 of the Air Force Rules, 1969.

**10.** It is revealed from the record that in between the petitioner challenged finding of Court of inquiry and show cause notice dated 04.06.1997 (**Annexure P-9**) before the Hon'ble High Court vide writ petition bearing No.3897/1997. At that time disciplinary proceeding was pending and any adverse order was not passed. In these circumstances, applicant withdrew his writ petition on 19.09.1997 and thereafter, incorporating the order of compulsory retirement dated 08.06.1998 (**Annexure P-11**), he filed the present writ petition on 28.07.2000.

**11.** The applicant submitted that he filed his reply to the show cause notice on 03.09.1997 stating, inter alia, objecting the jurisdiction of the Air Force authority in taking proceedings and also claimed that the alleged inquiry has not been conducted as per rules. It is contended that on 08.06.1998 Air Force authorities passed illegal compulsory retirement order (**Annexure P-11**).

**12.** It is further contended that after his compulsory retirement the petitioner was issued another show cause notice dated 28.08.1998 (**Annexure P-12**) on behalf of President of India, wherein the applicant was required to show cause why his entire pensionary benefits should not be forfeited. He replied to the said show cause notice on 15.09.1998 (**Annexure P-13**). It is stated that after considering his

reply the respondents granted 75% of pension benefits to the applicant and forfeited 25% of the same vide order dated 12.04.1999 (**Annexure P-14**). The applicant in his petition also alleged that the Court of inquiry was not conducted as per rules, proper opportunity for cross-examination was not granted nor opportunity to produce defence witness was granted to him. It was also contended that as the allegations were related to civil offences and in that respect already FIR was lodged by Mrs. Meera Chaudhary to the police authorities, therefore, proceedings should not have been continued and he should not have been compulsorily retired. It was contended that after decision of criminal case on 23.06.2000 the applicant submitted an application for reinstatement back in service.

**13.** Respondents filed counter affidavit denying all the allegations made in petition and submitted that at the time of engagement of applicant's son, Vinod Pathak with Ms. Sujata Mishra, daughter of Mrs. Meera Chaudhary sufficient evidence were there of giving gifts and other items at the time of engagement ceremony and thereafter engagement was called off. Despite that gift items and money received during engagement ceremony were not returned to Mrs. Meera Chaudhary nor any proof of return of these items was produced before the Court of inquiry. In reply it was submitted that engagement was also approved with daughter of Sh. S.K. Pandey. Concerned ceremonies were taken place, but thereafter again it was called off

without any justification just before two days of the proposed date of marriage on account of non-fulfilment of demand. Thereafter, on the basis of the complaint made by Mrs. Meera Chaudhary as well as by Sh. S.K. Pandey, Court of inquiry was held and the Court of inquiry found the applicant guilty of the misconduct. On that basis, after due consideration of the report on administrative grounds show cause notice was issued and after due consideration of reply to notice was found unsatisfactory and his case was put to the Government for compulsory retirement and after approval he was compulsorily retired from service on 08.06.1998. It was also contended that thereafter a show cause notice was issued for forfeiting the pension and after considering his reply Government awarded 75% of pension to the applicant.

**14.** In reply it was also stated that Mrs. Meera Chaudhary filed a criminal case against the applicant and it was neither known to the Air Force authorities nor Air Force authorities were party to that criminal case. Further it was submitted that acquittal in criminal case has no bearing on the proceedings under the Air Force Act, 1950. The order of compulsory retirement was passed much earlier to the decision of criminal case and was based on independent material. It was also contended that in reply that the criminal court had acquitted the applicant by giving the benefit of doubt due to lack of material

evidence, since the compromise appears to have been reached between the parties.

**15.** It was replied that applicant is not absolved from his misconduct as a commissioned officer in IAF. It was also contended that during Court of inquiry proper opportunities were made available to the applicant to cross-examine Ms. Sujata Mishra and Ms. Ashu Pandey, but he did not avail the same. He was present throughout the inquiry and cross-examined the witnesses as per his choice.

**16.** Rejoinder was filed on behalf of applicant reiterating the grounds stated earlier. It was further submitted by the applicant that all the items which were received as gifts on engagement ceremony were returned on 18/19 January, 1996 and this fact has been admitted by Mrs. Meera Chaudhary herself in criminal Court proceedings. It is contended by the applicant that in criminal case lodged by Mrs. Meera Chaudhary filed at Bhagalpur, he was acquitted vide judgment dated 09.05.2000 (**Annexure P-17**). It is further contended that thereafter again he moved an application to the respondent authorities on 03.08.2000 for reinstatement in service but that was also rejected vide letter dated 01.11.2000 (**Annexure P-18**).

**17.** Arguments were heard and record perused.

**18.** During the course of arguments, learned counsel for the applicant reiterated the grounds stated earlier in the petition and



further submitted that he has wrongly been compulsorily retired vide impugned order dated 08.06.1998 and his pensionary benefits have wrongly been forfeited to the extent of 25%. It was contended that applicant filed earlier writ petition challenging the show cause notice dated 04.06.1997. At that time disciplinary proceedings were pending. In these circumstances, he withdrew that writ petition and, therefore, the earlier withdrawal of the writ petition will not come in his way in granting relief and the objection raised by the respondents is not sustainable. It was also contended that in this case Court of inquiry was initiated on the basis of the complaint made by respondent No.4, Mrs. Meera Chaudhary and respondent No.5, Mr. S.K. Pandey. Mrs. Meera Chaudhary also filed a criminal case on the same facts before the police authorities and that case was ultimately challaned in Court and during investigation the applicant also remained in judicial custody. On that basis he made a preliminary objection before the Court of inquiry that Court of inquiry proceedings be stayed till the final outcome of the criminal case, but that was not considered by the respondents. It was also contended that during Court of inquiry proceedings, due to the pendency of the criminal case, the applicant was not able to cross examine the witnesses nor proper opportunity was given. It was contended that Court of inquiry was also concluded in a hasty way with pre-conceived notion, further action thereon should not have been proceeded, but on the basis of Court of inquiry show cause notice was issued to the applicant, the

applicant replied to the same, but without proper application of mind he was compulsorily retired.

**19.** Learned counsel for the applicant contended that whatever misconduct is alleged against the applicant that was not related to service of the employee. Therefore, these should not have been investigated by the Court of inquiry nor any disciplinary action taken thereon, much more when criminal case on the same facts was pending and before the final outcome of the criminal case, action should not have been taken.

**20.** It was also contended by learned counsel for the applicant that after order of the acquittal in criminal case, the applicant filed a representation on 23.06.2000 to reconsider the matter and reinstate him in service, but that was not disposed of till filing of the writ petition. He also again made a representation dated 03.08.2000, but that was rejected vide order dated 01.11.2000 (**Annexure P-18**). He contended that in the light of acquittal in criminal case the punishment awarded in disciplinary proceedings is not sustainable. In support of his contention he also cited the judgment given in case of "**Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.**" AIR 1999 SC 1416.

**21.** Learned counsel for the respondents refuted the contentions raised by learned counsel for the applicant and submitted that the applicant challenged the Court of inquiry proceedings as well

as the issuance of notice in earlier writ petition and that writ petition bearing C.W. No.3897/1997 was withdrawn without permission to file fresh petition. Again in the present petition he has challenged the Court of inquiry and further action taken therein. He further contended that the applicant, under Order 23 Rule 4 CPC, was precluded from instituting fresh petition to challenge the same proceedings. Thus, the present petition is not sustainable. Learned counsel for the respondents further submitted that Court of inquiry proceedings were initiated on the two complaints made by respondents Nos.4 & 5, respectively and the scope of Court of inquiry was to investigate the misconduct by the applicant. He contended that proper opportunity was given to the applicant to cross-examine and the statements of witnesses were recorded in his presence.

**22.** Learned counsel for the respondents further submitted that opportunity was also given to the applicant to give his statement and he himself declined to avail to cross-examine the witnesses and record his statement and in this respect he has no right, at later stage, for seeking cross-examination of the witnesses. It was also contended that the points raised during the course of Court of inquiry were properly dealt with and after conclusion, the applicant was held guilty for committing misconduct. On that basis after due consideration it was inexpedient and impractical to hold Court martial, administrative action was taken as per rules. It was also contended

that the reply was considered and order for compulsory retirement was passed on 08.06.1998. It was further contended that pendency of criminal proceedings was not coming, in any way, in the disciplinary proceedings as the respondents authorities were not party to the said criminal case. Further it was contended that decision in criminal case is also have no nexus in a disciplinary proceeding. In the present case, the disciplinary proceedings is based on independent material and on the basis of finding of misconduct after giving adequate opportunities further orders were passed. It was also contended that after the order of compulsory retirement separate notice was given for forfeiture of pension. Thereafter, considering the reply of the applicant partial forfeiture of pension upto 25% was made. Petitioner filed representations and they were considered and disposed of after due applicant of mind. Learned counsel for the respondents in support of his contention cited judgments given in ***M.D., State Bank of Hyderabad & Anr. Vs. P. Kata Rao*** 2010 (1) All India Services Law Journal 504 and in case of ***Southern Railway Officers Association Vs. Union of India & Ors.*** 2010 (1) All India Services Law Journal 324.

**23.** We have considered the rival submissions and perused the judgments cited by learned counsel for the parties.

**24.** From the perusal of record, it is revealed that the Court of inquiry was convened on the basis of complaints made by respondent Nos.4 & 5. The scope of Court of inquiry was to find out the misconduct on the part of the applicant. There were allegations of deceiving and non-return of gift items given to the applicant and his son at the time of engagement ceremony. The Court of inquiry took the statements of the relevant witnesses and on coming to the conclusion of involvement of the applicant the procedure laid down in para 790 of the Air Force Regulations 1964 (revised edition) were adopted and the applicant was given full opportunity to attend the Court of inquiry. From record it is also revealed that statements were recorded in the presence of the applicant and he was given full opportunities to cross-examine. It was also revealed from the record that the applicant made an objection to the jurisdiction of the Court of inquiry, but that has been considered at appropriate level and it was observed that to recall the conduct of the employees in service of their dealings or in civil, Court of inquiry can be proceeded. We have also considered this aspect, but at the relevant time when applicant was very much in service and there were allegations of misconduct, the contention raised in this respect that the allegations were of civil nature and they were not to be investigated by Court of inquiry are not tenable.

**25.** The Court of inquiry gave the following findings with regard to the applicant:

“7. Fg Offr KS Pathak (21711) Lgsa (12<sup>th</sup> Witness) is held to blame for the following:

(a)(i) For making Smt. Meera Choudhary (11<sup>th</sup> Witness) believe that his son Fg Offr Vinod Pathak (4<sup>th</sup> Witness) would marry her daughter, Sujata Mishra and subsequently calling off the marriage without proper justification.

(ii) For refusing to return the money and the gifts taken from and on behalf of Smt. Meera Choudhary, even after unilaterally calling off the proposed marriage.

(iii) For deceiving Smt. Meera Choudhary and causing her severe mental agony by his acts as detailed above.

(b)(i) For making MWO SK Pandey (Retd.) (13<sup>th</sup> Witness) believe that his son Fg Offr Vinod Pathak would marry Kum Ashu Pandey, daughter of MWO SK Pandey (Retd.) and subsequently calling off the marriage without property justification.

(ii) For deceiving MWO SK Pandey (Retd) and causing him deep mental anguish.

(c) For behaving in a manner prejudicial to good order and Air Force discipline by his acts of commission and omission as detailed above.”

Thus, on the basis of both the complaints made by Mrs. Meera Chaudhary and MWO S.K. Pandey the applicant held responsible for misconduct and recommended for further action.

**26.** The applicant has raised several objections with regard to the procedural irregularities in conducting the Court of inquiry. We have considered the same, but from the perusal of the record it appears that proper opportunities were given and the evidence were recorded in the presence of the applicant. Thus, we are of the opinion that the applicant has not suffered any sort of prejudice. Therefore, the contentions raised, in this respect, are also not sustainable. We have also considered the contentions that the applicant earlier filed the writ petition No.3897/1997 before the Hon'ble High Court of Delhi and that was withdrawn on 19.09.1997 without any permission or liberty to file afresh. But, it is revealed that in earlier petition, he had challenged the show cause notice dated 04.06.1997 given on the basis of Court of inquiry. At that time, compulsory retirement order was not passed. In these circumstances, he has withdrawn the writ petition and thereafter, the applicant was compulsorily retired and in subsequent changed circumstances on fresh cause of action the present writ petition is filed. Therefore, the objection raised by learned counsel for the respondents is not sustainable.

27. We have also considered the contentions raised by applicant side that criminal case was initiated by Mrs. Meera Chaudhary and in that criminal case the applicant was acquitted. We have seen the relevant judgment dated 09.05.2000 in “*State Vs. Vinod Pathak & Ors.*” G.R. No.1155/97 & T.R. 1332/2000 and in para 6 of the said judgment, it has been mentioned that compromise has taken place and the accused/applicant should be discharged. The case was not found proved beyond doubts and that is the pre-requisite for holding guilty in criminal case. In these circumstances, the benefit of doubt was given to the accused and on that basis he was acquitted. Relevant paras of the judgment dated 09.05.2000 are reproduced hereunder for ready reference:

“6. I heard the arguments of Id. Advocates for parties and perused the file. The main argument of defence is that the compromise has arrived at between the parties and on that basis of compromise the accused be discharged from the charges.

.....

.....

Hence, giving benefit of doubt in the evidence, I discharge all the abovenamed three accused from the charges under Section 420 IPC and 3/4 Anti Dowry Act under section 248(1) of Cr.P.C. The accused are also relived from the liability of their personal surety bonds.”

28. Learned counsel for the applicant in this respect also cited the judgment given in ***Capt. M. Paul Anthony*** (supra), but in that case the departmental action was based on the criminal case, which



was lodged against him. On the same fact, considering raid and recovery, departmental proceedings were initiated and later on that was not found proved. Therefore, the departmental action, which was based on criminal case was held not sustainable. The relevant para 34 is reproduced hereunder:

“34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, ‘the raid conducted at the appellant’s residence and recovery of incriminating articles therefrom.’ The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement

with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand."

But that is not the position in the instant case. The present case was based on independent inquiry. The inquiry was also based on two complaints one by Mrs. Meera Chaudhary and second by Sh. S.K. Pandey and criminal case was only related to the allegations of Mrs. Meera Chaudhary. The allegation of Sh. S.K. Pandey on which the Court of inquiry gave their finding on misconduct was not the subject matter of the aforementioned criminal case. Thus, this judgment does not help the contention of the applicant.

**29.** The respondents have also cited the judgment given in **P. Kata Rao** (supra). In that case it was held that mere acquittal in criminal case may not annul departmental action. In case of **Southern Railway Officers Association** (supra) it was observed that acquittal is no ground to not to take departmental action. In that case persons were acquitted in criminal case but their dismissal by disciplinary authority was maintained.

**30.** We have also perused the material. After considering the reply notice, impugned order of compulsory retirement has been passed and approved by Government and thereafter, a separate

notice for forfeiture of pension was issued and considering his reply his pension has been forfeited upto 25% vide impugned order. Applicant filed representations for reinstatement in service after the acquittal in criminal case; they were rejected. On the basis of aforesaid discussion, there is no infirmity or illegality in the impugned orders. The representations were filed and they were considered and rejected. No interference is needed in any orders. The application is, accordingly, dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 30<sup>th</sup> day of August, 2011**