

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1/2022

Ex Sgt Rama Kumar Nerella Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate with
Ms. Ayushi Mehrotra and
Mr. M.R. Sangeetha, Advocates
For Respondents : Ms. Jyotsna Kaushik, Advocate

Reportable/Non Reportable

Date: 01 August, 2024

CORAM

HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Applicant who was working as a Sgt in the Indian Air Force and posted on the strength of 28 Sqn Air Force has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 seeking quashing of the order of dismissal passed against him based on show cause notices issued to him. The relief claimed in para 8 reads thus:

- (a) To pass directions to the respondents to bring on record all the relevant documents.
- (b) To pass an order(s), direction(s) for quashing and setting aside the dismissal order of the applicant dated 23.11.2021 and show cause notices dated 26.04.2021, 25.06.2021, 12.08.2021.

- (c) *To pass directions to the respondents to reinstate the applicant into service till his scheduled discharge, i.e., 30 June, 2022.*
- (d) *To pass an order(s), direction(s) for converting the dismissal of the applicant into discharge by considering the application of the applicant of discharge on compassionate grounds.*
- (e) *To direct the respondents to allow the applicant to attend a pre-release course already detailed.*
- (f) *To direct the respondents to release his retiral benefits and pension as per his service rendered in the Air Force.*

2. An administrative action was taken against the applicant on account of the fact that he failed to abide by the directions of the Competent Authority and refused to take the COVID 19 vaccination during the COVID pandemic.

3. The applicant was enrolled in the Indian Air Force on 17th June, 2002 and, as contended, continued to remain on its strength up to 13th December, 2021 having served for about a period of 19 years. The impugned action vide *Annexure A-1* dated 23rd November, 2021 has been taken against him in accordance to the provisions of Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969. According to the applicant, he was due for discharge on attaining the age of superannuation with effect from 30th June, 2022 but vide order dated 23rd November, 2021 (*Annexure A-1*), stated to have been received by the applicant

on 13th December, 2021, he was dismissed from service. It is the case of the applicant that after his marriage on 4th August, 2012 he was facing personal health issues and had certain other issues because of which on 7th August, 2017 he sought discharge from service on compassionate grounds. This was rejected under the relevant Rules on 31st October, 2017. The applicant again sought discharge, which was also not allowed. Ultimately, the applicant during the period of COVID was subjected to the impugned action on account of his refusal to undertake the COVID vaccination. From the record it is seen that on account of nationwide COVID pandemic, the COVID vaccination programme and vaccination drive was conducted throughout the country and the Indian Air Force also undertook the vaccination programme. It was stressed upon all service personnel to undergo COVID-19 vaccination on priority basis to avoid spreading of infection in the force. In furtherance to the said policy in February 2021 all personnel in various Air Force Stations were instructed to report to the Station Medical Centers for undergoing COVID-19 vaccination in a phased manner. The applicant refused to get himself vaccinated. He was counseled by the Station Adjutant as

well as the Medical officer who briefed him about the vaccination, its requirement for safety of self and others including apprehension about side effects of the vaccination. In spite of the same, i.e., counseling on more than two occasions, the applicant refused to undergo the COVID vaccination and, therefore, a show cause notice dated 26th April, 2021 was issued to him. The applicant submitted his reply to the same reiterating his unwillingness to undergo the vaccination. Air Headquarters vide its letters dated 8th April 2021 and 22nd June 2021 filed as Annexures R-1 and R-2 with the counter affidavit filed by the respondents, issued circulars and policies to all units of the Western Air Command to deal with the air warriors refusing to undergo vaccination against COVID. The said policy stipulated that timely vaccination against corona virus is a service requirement and not an individual option. It was indicated that cases of individuals who fail to get themselves vaccinated within the stipulated time frame were required to be proceeded against under Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969 and on account of the comprehensive policy contained therein and the

consistent refusal of the applicant to undergo the vaccination, the impugned action has been taken.

4. Mr. Ajit Kakkar, learned counsel for the applicant, took us through the facts, as detailed hereinabove, and argued that throughout his career and even at the time when the impugned action was taken, the applicant was in good shape, i.e., Shape-I; he was healthy, had been extensively and regularly undertaking yogic exercise to maintain his health and it was not at all necessary for the applicant to undertake the COVID vaccination. It was also tried to be emphasized that the respondents illegally refused permission for discharge from service and instead of granting discharge to the applicant, have taken the impugned action.

5. Placing heavy reliance on the judgment of the Hon'ble Supreme Court in the case of Jacob Puliyeel Vs. Union of India and Ors. (WP (C) No.607/2021) decided on 2nd May, 2022, it was argued by learned counsel for the applicant that insisting upon taking COVID vaccination and employing coercive vaccination method would interfere with the principle of informed self-determination of an individual which is protected by Article 21 of the Constitution. It was argued by the learned

counsel, based on the aforesaid judgment, that body integrity is protected under Article 21 of the Constitution and no individual can be forced to be vaccinated. The personal autonomy of an individual involves the right of the individual to determine how they should live their own life which consequently encompasses the right to refuse to undergo any medical treatment in the sphere of individual health. Taking us extensively through the judgment rendered in the case of *Jacob Puliyeel* (supra), learned counsel for the applicant argued that on account of applicant's refusal to undertake the COVID vaccination, the impugned action could not be taken and, therefore, it was prayed that the impugned order be set aside and the applicant be deemed to have retired on attaining the age of superannuation on 30th June, 2022 and accordingly all consequential benefits granted to him.

6. The respondents have refuted the aforesaid contentions and it is their case that vide Policy Letter dated 26th April, 2021 and 22nd June, 2021 (*Annexures R-1 and R-2*) respectively were issued taking into consideration the national interest, the security concern of the force/Nation and the requirement of defence service and all air warriors were required to undergo

COVID vaccination to prevent spreading of the corona virus so also to ensure that during the pandemic they are available for the security of the country and in public interest refusal to undertake COVID vaccination was considered to be an anti discipline action and granted authority to the respondents to take action against its violation as the timely vaccination against corona virus is stipulated as a service requirement. It was further emphasized that every airman at the time of enrolment is required to fill in a statutory Enrolment Form in IAFF (P5) and in the said form filled by the applicant (Annexure R-6), he has clearly expressed his willingness for getting vaccinated as and when required by answering to the said query at question No.,15 by saying 'YES'. It is the case of the respondents that the applicant even though medically fit and placed in A4G1 category, without valid reason, refused to be administered the COVID -19 vaccination in spite of repeated counseling and affording reasonable opportunities. He was aware of the situation created in the country on account of COVID 19 pandemic. He was aware of the social and administrative fabric in the Indian Air Force, service requirement, the national and security interest involved in the matter and in spite of the same

refused to undertake the vaccination. As a result, after issuing show cause notice he was found to have disobeyed the lawful authority and orders of the Competent Authority and the impugned action taken. It is the case of the respondents that in 2017 and 2019 the applicant had sought discharge from service. This was processed and while processing the case in accordance with the Air Force Rules and Regulations, it was found that multiple cases of indiscipline were pending against the applicant and in October 2017 his prayer for discharge was rejected as the Competent Authority of the Unit could not furnish a certificate of clearance against the disciplinary action. It was found that on account of indisciplined activities, disciplinary actions were pending against the applicant and for discharge NOC was not issued. It is further emphasized by the respondents in the counter affidavit that because of the applicant's inaction to undertake the COVID vaccination, he was not permitted to enter the Air Force Station and he had to remain at home for more than six months together. It is the case of the respondents that the applicant was an air warrior holding important assignments and the Air Force was unable to utilize his services during the period of COVID pandemic where

national interest required his presence in the Unit but because of his refusal to undertake the vaccination, his services could not be utilized. It is emphasized in the counter affidavit that the applicant during his tenure has consistently displayed an attitude which was unworthy of an air warrior and on many occasions had displayed unwillingness to follow orders of the superior authority. It is emphasized in para 5A to C of the counter affidavit as under:

“5A to C That the contentions raised by the applicant in these Paras of OA are absolutely misconceived, hence denied. The applicant, during tenure at the Sqn had consistently displayed an attitude unworthy of an air warrior and displayed unwillingness to follow orders on various occasions. He was also in the habit of putting up applications time and again for every issue as per his perception and had been poor influence on his peers and subordinates. Regarding his dismissal for refusal for vaccination as well as auctioning of his applications for discharge from service, replies submitted in preceding paragraphs are reiterated and not repeated for the sake of brevity. Further it is clarified that the applicant has mentioned that he was proceeding on discharge from service on superannuation wef 30 Jun 22 which is incorrect in the manner averred. The applicant was in fact proceeding on discharge from service on expiry of his Regular Engagement (RE) of 20 years. It is further submitted that each act of indiscipline committed by the applicant were dealt with independently without causing any prejudice to the applicant.”

It is the case of the respondents that by denying to undertake vaccination against COVID 19, the applicant has not only disobeyed the policies of the Indian Air Force but also put physical health of self as well as of fellow colleagues in danger. It is stated in the counter affidavit that during most of the COVID -19 peak period, the

services of the applicant could not be utilized for station duty. He stayed at home and did not perform any duty for more than six months. He set a very wrong example for other air warriors in the Station as refusal to vaccination led to a belief that a person could escape his duty and commitment to service. Because of the gross indiscipline committed by the applicant, it is the case of the respondents, after issuance of show cause notice, the impugned action has been taken and there is nothing wrong in the same.

7. When the show cause notice was issued to the applicant he submitted his reply on 9th September, 2021 and raised the following contentions:

- (a) *During the second wave of COVID-19, the symptoms were quickly and clearly visible in large number of cases and that during the peak period of both the waves, you had performed Station duties along with fellow air-warriors despite the fact that you stay outside the station;*
- (b) *Taking vaccine is not the only solution to the deadly virus and that there is no guarantee of life even after taking the vaccine. Unless there is 100% guarantee being free from any threat to life after taking the vaccine, it should be a matter of individual choice rather than being a service requirement.*
- (c) *You also admitted of the counseling sessions held by various unit authorities in respect of the vaccination and its effects, if any. You have reiterated your contentions with respect to the side effects of the vaccine and that the vaccine has not undergone the clinical trial due to which you refuse to take the vaccine.*
- (d) *You have also contended that you may not be pressurized to take the vaccine as it is not mandated by the Govt of Bharat and has been left to the opinion of public.*

- (e) *You have denied disobeying the directions issued by HQ WAC vide letter No. WAC/C 2806/PI dated 22 Jun 21 and Air Hq Letter No. Air HQ/C 23401/111/Discip dated 28 Apr 21 and 17 Jun 21 alleging that the authorities have come to an early conclusion that your refusal reflects gross indiscipline and your continuation in service will adversely impact health of other air warriors and AF civilians.*
- (f) *Lastly, you have requested that no coercive action against you may be taken without considering the fact that the vaccine is on voluntary basis. You have further requested that you may be discharged from the service rather than being dismissed from the service."*

The same were considered by the Competent Authority and in para 9, the following reasons were indicated for rejecting the same.

- "(a) You are medically fit and are in a A4GI category. You were repeatedly counseled and afforded reasonable opportunities to undergo COVID-19 vaccination. In spite of being aware of the overall pandemic situation the country and likely ill effects of not administering COVID-19 vaccination on social fabric in IAF as well as on the overall operational preparedness of the Armed Forces, you refused to undertake COVID-19 vaccination on various reasons, which lacks merit and thereby, do not inspire confidence. Accordingly, your continuation in the service is likely to adversely impact the health of other air warriors and AF civilians.*
- (b) Such refusal to get yourself vaccinated is clearly in violation of the policy issued on the subject vide HQ WAC/C 2806/PI dated 22 Jun 21 and Air Hq Letter No. Air HQ/C 23401/111/Discip dated 28 Apr 21 and 17 Jun 21 which stipulates that administration of COVID-19 vaccination is a mandatory service requirement. The said misconduct on your part, therefore, amounts to gross indiscipline. It is not only condemnable but also prejudicial to the community & social living in the IAF."*

8. We have heard learned counsel for the parties and have bestowed our anxious consideration into various aspects of the matter. The applicant is not a civilian employee but is an air warrior, a member of the disciplined Armed Force of the country

engaged in doing service to the nation in the Indian Air Force, he is bound by the mandate of Article 33 of the Constitution, his service as an warrior is absolutely necessary for the purpose of national security and interest. A member of the force is expected to be disciplined and cannot act in a manner which is prejudicial to the interest of the service which ultimately affects the discipline in the force and security of the nation. From the counter affidavit it is clear that the services of an experienced air warrior could not be availed of for more than six to eight months because of his indisciplined attitude in complying with the directions of the authorities. It is in the back drop of the special service requirement as a special rule governing the services of a member of the armed forces that the issue of refusal to undertake vaccination by the applicant, to be examined by this Tribunal.

9. As heavy reliance was placed on the judgment rendered by the Hon'ble Supreme Court in the case of *Jacob Puliyeel* (supra), it is necessary for this Tribunal to take note of the principle of law laid down in the aforesaid matter and evaluate its applicability to the facts and circumstances of the case at hand.

10. The writ petition was filed in the Hon'ble Supreme Court under Article 32 of the Constitution and the petitioner therein, who was a member of National Technical Advisory Group on

Immunization invoked the jurisdiction of the Supreme Court and the relief claimed in the writ petition reads as under:

- “(a) Direct the respondents to release the entire segregated trial data for each of the phases of trials that have been undertaken with respect to the vaccines being administered in India; and*
- (b) Direct the respondent No.2 to disclose the detailed minutes of the meetings of the Subject Expert Committee and the NTGAI with regard to the vaccines as directed by the 59th Parliamentary Standing Committee Report and the members who constituted the Committee for the purpose of each approval meeting; and*
- (c) Direct the respondent No.2 to disclose the reasoned decision of the DCGI granting approval or rejecting an application for emergency use authorization of vaccines and the documents and reports submitted to the DCGI in support of such application; and*
- (d) Direct the respondents to disclose the post vaccination data regarding adverse events, vaccines who got infected with Covid, those who needed hospitalization and those who died after such infection post vaccination and direct the respondents to widely publicise the data collection of such adverse event through the advertisement of toll free telephone numbers where such complaints can be registered; and*
- (e) Declare that vaccine mandates, in any manner whatsoever, even by way of making it a precondition for accessing any benefits or services, is a violation of rights of citizens and unconstitutional; and*
- (f) Pass any other orders as this Hon’ble Court deems fit.”*

As far as the present issue before this Tribunal is concerned, it is only prayer clause (e) which is relevant for the determination of this OA. In the writ petition the petitioner has highlighted the adverse consequence of emergency approval of vaccination in India and it was stated that coercive vaccination would result in interfering the protection available under Article 21 of the Constitution. Various submissions were made before the Hon’ble Supreme Court and

reliance was placed on various judgments including a judgment of the High Court of New Zealand in the case of Ryan Yardley Vs. Minister for Workplace Relations and Safety [8(2022) NZHC 291].

11. The Union of India also contested the matter and not only questioned the maintainability of the writ petition but also emphasized the necessity of vaccination and the requirement of the vaccination policy in the backdrop of public interest on account of the second wave of COVID 19 pandemic. Submissions were made at length and the Hon'ble Supreme Court came to the following conclusion in para 89 of the writ petition:

"89 . In conclusion' we have summarised our findings on the various issues considered by us' below:

- (i) Given the issues urged by the petitioner have a bearing on public health and concern the fundamental rights of individuals in this country, we are not inclined to entertain any challenge to the maintainability of the Writ Petition.*
- (ii) As far as judicial review of policy decisions based on expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have the expertise to appreciate and decide on merits of scientific issues on the basis of divergent medical opinion, However, this does not bar the Court from scrutinizing whether the policy in question can be held to be beyond the pale of unreasonableness and manifest arbitrariness and to be in furtherance of the right to life of all persons, bearing in mind the material on record.*
- [iii] With respect to the infringement of bodily integrity and personal autonomy to the infringement of bodily integrity and personal autonomy of an individual considered in the light*

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of vaccines and other public health measures introduced to deal with the COVID-19 pandemic, we are of the opinion that bodily integrity is protected under Article 21 of the Constitution and no individual can be forced to be vaccinated. Further, personal autonomy of an individual, which is a recognized facet of the protections guaranteed under Article 21, encompasses the right to refuse to undergo any medical treatment in the sphere of individual health, However, in the interest of protection of communitarian health, the Government is entitled to regulate issues of public health concern by imposing certain limitations on individual rights, which are open to scrutiny by constitutional courts to assess whether such invasion into an individual's right to personal autonomy and right to access means of livelihood meets the threefold requirement as laid down in K.S. Puttaswamy (supre), i.e., (i) legality, which presupposes the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.

- (iv) *On the basis of substantial material filed before this Court reflecting the near-unanimous views of experts on the benefits of vaccination in addressing severe disease from the inflecting the near- unanimous views of experts on the benefits of vaccination in addressing severe disease from the infection, reduction in oxygen requirement, hospital and ICU admissions, mortality and stopping new variants from emerging, this Court is satisfied that the current vaccination policy of the Union of India is informed by relevant considerations and cannot be said to be unreasonable or manifestly arbitrary. Contrasting scientific opinion coming forth from certain quarters to the effect that natural immunity offers better protection against COVID-19 is not pertinent for determination of the issue before us.*
- (v) *However, no data has been placed by the Union of India or the States appearing before us, controverting the material placed by the*

petitioner in the form of emerging scientific opinion which appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost on par with that from vaccinated persons. In the light of this, restrictions on unvaccinated individuals imposed through various vaccine mandates by State Governments/Union Territories cannot be said to be proportionate. Till the infection rate remains low and any new development or research finding emerges which provides due justification to impose reasonable and proportionate restrictions on the rights of unvaccinated individuals, we suggest that all authorities in this country including private organizations and educational institutions, review the relevant orders and instructions imposing restrictions on unvaccinated individuals in terms of access to public places, services and resources, if not already recalled. It is clarified that in the context of the rapidly evolving situation presented by the COVID 19 pandemic, our suggestion to review the vaccine mandates imposed by States/Union Territories, is limited to the present situation alone and is not to be construed as interfering with the lawful exercise of power by the executive to take suitable measures of prevention of infection and transmission of the virus. Our suggestion also does not extend to any other directions requiring maintenance of COVID-appropriate behavior issued by the union or the State Governments.

- (vi) *As regards non-disclosure of segregated clinical data, we find the results of Phase III clinical trials of the vaccines in question have been published, in line with the requirement under the statutory regime in place, the GCP guidelines and the WHO Statement on Clinical Trials. The material provided by the Union of India, comprising of minutes of the meetings of the SEC, do not warrant the conclusion that restricted emergency use approvals had been granted to COVIDSHIELD and COVAXIN in haste, without thorough review of the relevant data. Relevant information relating to the meetings of the SEC*

and the NTAGI are available in public domain and therefore challenge to the procedures adopted by the expert bodies while granting regulatory approval to the vaccines on the ground of lack of transparency cannot be entertained. However, we reiterate that subject to the protection of privacy of individual subjects, with respect to ongoing clinical trials and trials that may be conducted subsequently for COVID-19 vaccines, all relevant data required to be published under the extant statutory regime must be made available to the public without undue delay.

- (vi) *We do not accept the sweeping challenge to the monitoring system of AEFIs being faulty and not reflecting accurate figures of those with severe reactions or deaths from vaccines. We note that the role of the Pharmacovigilance Programme of India and the CDSCO, as elaborated upon by the Union of India, collates and studies previously unknown reactions seen during monitoring of AEFIs at the time of vaccine administration and we trust the Union of India to ensure that this leg of the AEFI surveillance system is not compromised with while meeting the requirements of the rapid review and assessment system followed at the national level for AEFIs.*
- (viii) *We are also of the opinion that information relating to adverse effects following immunization is crucial for creating awareness around vaccines and their efficacy apart from being instrumental in further scientific studies around the pandemic. Recognizing the imperative need for collection of requisite data of adverse events and wider participation in terms of reporting, the Union of India is directed to facilitate reporting of suspected adverse events by individuals and private doctors on an accessible virtual platform. These reports shall be made publicly accessible without compromising on protecting the confidentiality of the persons reporting , with all necessary steps to create awareness of the existence of such a platform and of the information required to navigate the*

platform to be undertaken by the Union of India at the earliest.

- (ix) *On pediatric vaccination, we recognize that the decision taken by the Union of India to vaccinate children in this country is in tune with global scientific consensus and expert bodies like the WHO, the UNICEF and the CDC and it is beyond the scope of review for this Court to second-guess expert opinion on the basis of which the Government has drawn up its policy. Keeping in line with the WHO Statement on Clinical Trials and the extant statutory regime, we direct the Union of India to ensure that key findings and results of the relevant phases of clinical trials of vaccines already approved by the regulatory authorities for administration to children, be made public at the earliest, if not already done.*

12. But before coming to the aforesaid conclusion certain observations made by the Hon'ble Supreme Court needs to be considered. In para 49 after discussing the mandate of Article 21 in various judgments even though the Hon'ble Supreme Court emphasises the protection available under Article 21 of the constitution to an individual, the individual's right to personal autonomy in Para-c goes on to emphasise that persons who are keen not to be vaccinated on account of personal beliefs or preferences, can avoid vaccination, without anyone physically compelling them to be vaccinated. However, the Hon'ble Supreme Court emphasizes in this para to say that if there is likelihood of such individual spreading the infection to other people or contributing to mutation of the virus or burdening of the public health infrastructure thereby affecting communitarian health at large, protection of which is

undoubtedly a legitimate aim of the State having paramount significance in the collective battle against the pandemic, the Government can regulate such public health concerns by imposing limitations on individual's right as has been done in the matter of vaccination. The Hon'ble Supreme Court goes on to say that the Court believes that as long as there is a risk of spreading the disease, there can be restrictions placed on individual's right in public interest. However, such restrictions should not be unreasonable and should withstand the judicial scrutiny of a court. The Hon'ble Supreme Court further examined the principles culled out by the New Zealand High Court in the case of Ryan Yardley (supra) and we find that even while taking note of the principles considered by the New Zealand High Court observed in para 45 that the order mandating vaccinations for the police and defence personnel was imposed to ensure the continuity of services that are essential for public safety, national defence or crisis response to promote public confidence in those services and that principle has been culled out in para 49 as has been discussed hereinabove.

13. From the analysis of the aforesaid judgment we can safely come to the conclusion that even though body integrity is protected under Article 21 of the Constitution and personal autonomy of an individual and the right of an individual to determine and decide whether to undergo the medical treatment of individual health is

concerned, the same is protected under Article 21 of the Constitution but when the effect of such refusal has direct bearing on public safety, national safety health requirement and national security, the State or Competent Authority undoubtedly has the right to protect the public/national interest and regulate it by reasonable restrictions. That being so, if we analyse these principles in the backdrop of the service requirement of the applicant, it is clear that the applicant was an air warrior posted in a Sqdrn of the Indian Air Force at a particular Air Force Station and was required to act in a manner so as to contribute his services to the requirement of the Air Force services which was of paramount importance to national security and defence of the country etc. The conduct of the applicant in refusing to undergo the vaccination in spite of counseling compelled the authorities to prevent him from working and utilizing his services for the nation. He had to remain in his house for months together and his services were not utilized as a consequence of which the essential services of the Air Force in the Station were adversely affected. Not only did this affect the functioning of the force to some extent but it also spread a belief that refusal to undergo the vaccination will not adversely affect the service of an employee and he can get away with such refusal. A member of a disciplined force, i.e., a fighting force is required to adhere to the lawful orders of the command and the superior and any refusal on his part has to

be viewed seriously unlike it can be done in a normal civil employment. The moment an individual enters into service for the defence of the country and becomes the member of a uniformed disciplined force, his service requirement becomes important to the nation and he is bound by the terms and conditions of service which are formulated keeping in view the requirement of Article 33 of the Constitution. The applicant in refusing to undertake the COVID vaccination acted in contravention to the service requirement, disobeyed the policy laid down by the Indian Air Force, refused to comply with the lawful orders of his superiors and in spite of counseling and advice being given to him refused to contribute his services to the Air Force at the most crucial period when the entire nation was undergoing the pandemic situation. A member of a disciplined force cannot be expected to behave in such a manner and if finding the applicant to have no justifiable reason in refusing to follow or adhere to lawful orders of the superior officers, administrative action was taken to dismiss him, this statutory Tribunal does not find any ground to interfere into the matter in exercise of its limited statutory jurisdiction of judicial review when no mala fide, arbitrariness or violation of any statutory rule or regulation is pointed out. The applicant acted contrary to the contract of service and, therefore, the action taken by the

respondents, after issuing show cause notice and considering his defence cannot be faulted with.

14. In our considered view, the respondents have acted in a lawful manner after giving proper and reasonable opportunity to the applicant before taking the action and, therefore, the same cannot be termed as arbitrary, illegal or unreasonable in any manner whatsoever. Considering the fact that the applicant, a member of the disciplined force, who was required to maintain high standards of discipline and dedication for duty in which he miserably failed to do so by his act and conduct which compelled the respondents to act in the manner as impugned.

15. Keeping in view the facts and circumstances of the case and for the reasons discussed hereinabove, we see no reason to make any interference into a reasonable order passed by the respondents.

16. The OA is accordingly dismissed with no order as to costs.

Pronounced in open Court on this ^{SI} day of August, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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