COURT NO.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1553/2018

Wg Cdr Anant Saxena F(P) ..... **Applicant**
Versus
Union of India and Ors. ..... **Respondents**

For Applicant : Mr. Abhik Chimni, Mr. Pranjal Abrol,
Mr. Gurupal Singh & Rishabh Gupta Advocate(s)

For Respondents : Mr. Satya Ranjan Swain, Advocate with
Mr. Ankush Kapoor, Advocate

CORAM
HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE RASIKA CHAUBE, MEMBER (A)

ORDER

This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, seeking following reliefs:-

a. Set aside the Impugned Order no. 105/CC/D(Air-III)/2015 dated 18.09.2015 and the subsequent Order No. AIRHQ/23407/60/1/PS dated 16.02.2018;
b. Or in the alternative, if this Hon'ble Tribunal deems it fit in the facts of the case:
c. Hold that the Applicant was punished excessively and that the punishment be modified to the extent that the Applicant be treated as retired after serving 20 years of pensionable service, entitled to his service dues.
d. Pass any such further orders as this Hon'ble Court may deem fit and proper in the facts of the present case.

BRIEF FACTS OF THE CASE

2. The applicant was commissioned in the Indian Air Force on 21.12.1996 with Permanent Commission and served for nearly 19 years with an unblemished record, including operational deployments as an An-32 pilot in Op Safed Sagar (1999), Orissa Super Cyclone Relief (1999),

Bhuj Earthquake Relief (2001), Op Parakram (2002), air logistics in Arunachal Pradesh (2006-2010), Op Meghdoot in J&K (2010-2015), and J&K flood relief (2014), besides instructing at the National Defence Academy.

3. After mutual divorce from his first marriage on 01.10.2010, the applicant intimated his intention to marry Ms. Trilochan Kaur Bhatia, an Indian citizen, divorcee, Green Card holder (No. A112002342), residing and working in the USA with a foreign commercial organisation, vide request dated 20.02.2012 to his Commanding Officer (48 Sqn, 12 Wing AF). He formally applied for permission on 20.03.2012 under Para 5 of AFO 04/2009, disclosing her status, which was recommended by the CO and endorsed "in order" by the Station Commander per AFO 04/2009 and IAP 3904, then forwarded to Air HQ via HQ WAC.

4. HQ WAC vide letter dated 08.05.2012 (ref. Air HQ letter 03.05.2012) informed the unit that acquisition of Green Card/immigration status by spouses of defence personnel is not permitted under paras 1 & 2(ii) of MoD letter No. 16(55)/86/D(Coord) dated 25.05.1989. Meanwhile, the applicant's leave application dated 23.03.2012 for "Excursion (Post Marriage)" to USA/France (18.06.2012 to 20.07.2012) was granted NOC on 07.06.2012 and permission on 08.06.2012 by Air HQ. He married Ms. Bhatia on 24.06.2012; unit conducted dining-in per custom.

5. Post-marriage, applicant sought premature separation on compassionate grounds dated 28.11.2012 (forwarded 14.12.2012 by CO noting prior communications), the same was rejected by HQ WAC on 30.10.2013 citing manning constraints and recommending branch duties. Furthermore, POR request dated 15.01.2013 for recording marriage was not approved and show Cause Notice dated 03.06.2014 (Air HQ/C 23407/1669/Discip) was issued under Section 19 Air Force Act, 1950 r/w Rule 16(4) Air Force Rules, 1969 for marrying without permission.

6. Thereafter, vide MoD order dated 18.09.2015, the applicant was removed from service This representation to CAS dated 08.12.2017 for reinstatement was rejected vide Air HQ letter dated 16.02.2018. As the applicant completed 18 years 10 months qualifying service, he was ineligible for pension (requires 20 years) or gratuity as penalty removal per MoD letter 25.04.2001.

SUBMISSIONS ON BEHALF OF THE APPLICANT

7. It is the case of the applicant that prior to his marriage on 24.06.2012, he made application for permission with the respondents on 20.03.2012 wherein he expressly disclosed that her spouse is an Indian citizen residing in the USA, holding a Green Card and owning a foreign commercial organisation and the Commanding Officer recommended the application and the Station Commander endorsed it as "in order", therefore, in anticipation, the applicant also sought annual leave for "Excursion (Post Marriage)" from 18.06.2012 to 20.07.2012, which was

processed through the chain of command, culminating in a NOC dated 07.06.2012 and permission letter dated 08.06.2012 from Air Headquarters. These actions demonstrate institutional acknowledgment of the marriage proposal and cannot be reconciled with the subsequent allegation of unauthorised marriage.

8. Contending on the legality, it is submitted by the applicant that AFO 04/2009, read with Government instructions, mandates that requests for permission to marry foreign nationals be processed within 120 days, beyond which consent is deemed granted. It is argued that the impugned order itself cites para 16(c) of AFO 04/2009 embodying this principle however the respondent failed to issue any express refusal within this timeframe and instead, granted NOC and travel permission for "Excursion (Post Marriage)." Furthermore, the communication dated 08.05.2012 from HQ WAC merely reproduced an advisory opinion on acquisition of immigration status and did not prohibit the marriage and therefore, in these circumstances, the doctrine of estoppel and the principle of contra proferentem operate against the respondents, precluding them from alleging an unauthorised marriage when their own conduct created a legitimate expectation of approval.

9. It is further submitted by the applicant that the penalty of removal is grossly disproportionate as the applicant had nearly 19 years of spotless, operationally intensive service without any prior adverse entry and that the alleged misconduct concerns his personal marital status, disclosed

transparently and acted upon in good faith, wherein the respondents themselves endorsed his marriage proposal, granted leave permissions, and continued to utilise his services and yet, without offering any lesser penalty or opportunity to regularise the situation, they imposed the extreme sanction of removal, extinguishing his pensionary rights accrued over nearly two decades.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

10. Per contra, it is the case of the respondents that the impugned order of removal dated 18.09.2015 is proper, legal and sustainable in law, as the applicant was removed for a clear and gross violation of the provisions of the Central Government's policy contained in MoD letter No. 16(55)/86/D(Coord) dated 25 May 1989 and Air Force Order (AFO) No. 04/2009, inasmuch as mere forwarding of the application for marriage to the competent authority, without its approval does not confer any permission to solemnize such marriage, particularly where the relevant policy expressly prohibits marriage to a person holding a foreign immigration status such as a US Green Card.

11. It is the contention of the Respondents that the applicant's application, though forwarded through proper channel to Air Headquarters, was declined vide Air HQ letter dated 03.05.2012, which clarified that acquisition of immigration status/Green Card by the spouse of defense personnel is not permitted under the MoD letter dated 25.05.1989. The respondents further emphasize that the Green Card held

by applicant's spouse is a Permanent Resident Visa conferring lawful permanent residence in the USA with rights akin to those of citizens (except voting), thereby subjecting the proposed marriage to the said restrictive policy under the MoD letter and AFO 04/2009, which prohibit such marriage unless specific permission is granted and despite being fully aware of these constraints and the explicit position communicated by Air HQ, the applicant solemnized the marriage on 24.06.2012 without permission, thereby committing a gross breach of service discipline and obligations.

12. It is further contended by the respondents that the applicant's contention that his application was treated as "in order" or deemed approved is not supported by the record and that approval for leave for "Excursion (Post Marriage)" or any travel does not amount to permission to marry in contravention of the policies.

13. It is submitted by the respondents that the approval of recommending officers does not override the authority of the Air HQ, which alone is vested with the power to permit marriage with a foreign national or persons holding foreign immigration status, moreover the applicant was aware that Air HQ is the only appropriate authority for such permission and his willful disregard of this requirement exhibits scant regard for service discipline and renders his marriage invalid in terms of service law and policy.

14. With respect to premature separation, it is submitted by the respondents that the applicant's request for premature separation dated 28.11.2012, premised on personal grounds including his marriage, was duly considered and rejected on 30.10.2013 by HQ WAC citing manning constraints, demonstrating the authority's well-considered decision to retain his services and the removal order in 2015 followed due process after issuance and consideration of the Show Cause Notice and replies submitted by the applicant, thereby complying with principles of natural justice.

15. On the contention of the applicant for prayer for grant of pension and service benefits, it is submitted by the Respondents that the applicant completed only 18 years and 10 months of qualifying service, falling short of the minimum 20 years required for pension. Moreover, under MoD letter dated 25.04.2001 and amended provisions, officers dismissed or removed as a measure of penalty under the Air Force Act and Rules are disqualified from pension and gratuity benefits except where the President of India exercises discretion otherwise.

16. Conclusively, it is submitted by the respondents that the action taken by the Government is in strict accordance with service law, established policies, and discipline necessary for the effective functioning of the Armed Forces. Any leniency in such matters would undermine the sanctity of service rules and adversely affect the discipline and morale of the force, hence, the Original Application be dismissed.

CONSIDERATION

17. We have heard both the parties at length, and have perused the material placed on record, whereinafter we find that the limited question for our adjudication is whether the removal of the applicant on account of marriage with a foreign national is as per law or not?

18. Prior to an adjudication on the merits, it is imperative to examine the Order of Removal dated 18.09.2015. Issued by the Government of India, this Order provides a comprehensive analysis of the allegations leveled against the applicant, the representations made in response thereto, and the statutory grounds for dismissal under the extant rules. The relevant portions of the said Order are reproduced hereinbelow:

Air HQ/C 23407/1669/PS/MoD F.Dy. No. 105/CC/D(Air-III)/2015

Government of India
Ministry of Defence

New Delhi, dated 18th September, 2015

ORDER

1. WHEREAS, Wg Cdr Anant Saxena (24237) F(P), was commissioned in the Indian Air Force on 21 Dec 1996, in the Flying Branch and is presently posted to 48 Sqn, AF;

2. AND WHEREAS, the officer had sought permission vide application dated 20 Mar 12, to get married to Ms Trilochan Kaur Bhatia, an Indian National possessing Green Card/immigration status, residing and working in a commercial organization in USA

3. AND WHEREAS, the request of the officer was rejected vide Air HQ/23498/562/40/PS dated 03 May 12 on the ground that spouse of defence personnel is not permitted to acquire foreign citizenship or immigration status/Green Card. It was conveyed to the unit of the officer vide letter No. WAC/3001/1/12Wg/P2 dated 08 May 12 to intimate him about rejection of his application for permission for marriage,

4. AND WHEREAS, despite the knowledge that he had not been granted permission to marry Ms. Trilochan Kaur Bhatia, he got married to the said lady on 24

Jun 12, in violation of the provisions of AFO 04/2009 GoI/MoD letter No 16(55)/86/D(Coord) dated 25 May 89 circulated vide Air HQ/C23498/PS dated 14 Aug 89 and Para 6.1 & 6.2 of Chapter-VI of IAP 3904.

5. AND WHEREAS, on directions of the Chief of the Air Staff, a Show Cause Notice (SCN) dated 03 Jun 14 was issued to the said officer to show cause as to why he should not be dismissed or removed from the service under Section 19 of Air Force Act, 1950 read with Rule 16 of Air Force Rules, 1969 for the above stated misconduct by getting married, without due permission of the Competent Authority. to Ms. Trilochan Kaur Bhatia, an Indian National having Green card, residing and working in USA.

6. AND WHEREAS, in his reply dated 01 Jul 14, to the said SCN, Wg Cdr Anant Saxena (24237) F(P) had brought out that Air HQ letter dated 03 May 12 & GoI/MoD letter dated 25 May 89. (mentioned in Paras 3 & 5 above respectively) were not furnished to him to enable him to prepare his reply and stated as follows:-

a. During his tenure 20 Feb 12, he had brought to the notice of his CO that he was desirous of at 48 Sqn C/O 12 Wg. getting married to a Sikh girl (divorcee), who was residing in USA. He was granted leave to proceed for engagement with Ms Trilochan Kaur Bhatia.

b. On 20 Mar 12, he formally applied for permission to marry, in accordance with Para 5 of AFO 04/2009. His application was duly recommended by his CO and Stn Cdr, 12 Wg.

c. HQ WAC, AC, in its letter dated 08 May 12 (addressed to 12 Wg), had brought out, quoting Air HQ letter dated 03 May 12, that "acquisition of immigration status/green card by spouse of defence personnel is not permitted as per Para 1 & 2 (1) of MoD letter No 16 (55)/6/D (Coord) dated 25 May 89". Thus, his application dated 20 Mar 12 was not specifically rejected.

d. On 24 Jun 12, he married Ms Trilochan Kaur Bhatia, who had two children from her previous marriage and they are citizen of USA by birth. His mother-in-law is suffering from multiple myeloma and undergoing treatment in USA. Hence, his wife was in a dilemma whether to stay in USA or to return to India. Therefore, he had applied for Premature Separation from Service (PSS) on extreme compassionate grounds which was rejected and conveyed vide HQ WAC letter No WAC/3009/1/PR/12W/P2 dated 30 Oct 13.

e. HQ WAC, vide another letter dated 16 Dec 13 had sought certain documents from 48 Sqn. As per Para 2 of the said letter, his application was apparently rejected vide Air HQ letter No. Air HQ/23498/562/40/PS dated 03 May 12 (wrongly mentioned as 03 May 13 by the officer). However, the said Air HQ letter was not communicated to him and he had learnt about rejection of his application only through the SCN served upon him. As per AFO 04/2009, if the application is not finalized within a period of 120 days, the consent is deemed to have been given. Thus, it is evident that his application dated 20 Mar 12, seeking permission for marriage, was accepted

f. The business entity 'Platinum Car Inc (Entity Control No. 11050616) located at 2006 Tavistock Ct, Alpharetta, Georgia-30022 deals in the sale/purchase of old/used cars and the business is entirely owned and undertaken by his wife, which is permissible as per IAP 3904, Chapter-VII, Paras 7.3 (d) and 7.5.

g. He has served the IAF with utmost dedication, sincerity, integrity and loyalty throughout his 17¾ years of Service and has taken active part in Op Safedsagar, Op Parakram, Bhuj Earthquake & Orissa Cyclone Ops. He has

neither been found wanting nor subjected to any disciplinary proceedings. In the instant matter also, he has always been prompt & forthcoming in apprising the organisation, to the best of his knowledge.

7. AND WHEREAS, in the interest of justice and fairness, the documents sought by the officer were provided to him and he was given an opportunity to submit an additional reply which he availed and submitted an additional reply dated 12 Nov 14. In the said additional reply, the officer mainly brought out as follows:-

a. He has not violated the provisions of GoI/MoD letter dated 25 May 89. He had sought permission to marry in accordance with AFO 04/2009, which was duly recommended by his CO & Stn Cdr, and was presumably accorded. The Air HQ letter dated 03 May 12, reveals that the permission to marry was never denied to him. Consequently, he had married Ms Trilochan Kaur Bhatia on 24 Jun 12. The fact of marriage was known to the Unit and dining-in of his wife was undertaken by the Unit, as per prevalent customs of Service.

b. The issuance of SCN is based on more conjectures and surmises the GoI/MoD letter dated 25 May 89 does not prohibit an officer from marrying a person already holding immigration status. Moreover, he had informed the Service regarding these facts, prior to solemnizing the marriage.

c. His mother-in-law is suffering from multiple Myeloma (Blood Cancer) and is undergoing treatment in USA for Chemotherapy and Stem Ceil Transplant. His wife is under severe mental stress and is unable to revert to India. The situation is aggravated due to management of her children and issuance of SCN to him. Finally, the officer has requested that issuance of SCN be reviewed and reconsidered in the interest of justice

8. AND WHEREAS, the examination of the replies to the SCN, relevant provisions of IAP 3904, the policy of the GoI/MoD on the subject and other relevant material on record reveals that-

a. The application for marriage with Ms Trilochan Kaur Bhatia submitted by the officer was duly recommended and processed by the Station as well as HQ WAC. During process of the said application at Air HQ, it was observed that 'As per para 1 & 2 (ii) of MoD letter No. 16 (55)/86/D (Coord) dated 25 May 89; acquisition of immigration status/Green card by spouse of Defence personnel is not permitted. Accordingly, 12 Wing, AF was apprised. through HQ WAC, of the same to be informed to the officer vide Air HQ letter No. Air HQ/23498/562/40/PS dated 03 May 12 and HQ WAC letter No. WAC/3001/1/12Wg/P2 dated 08 May 12. This fact was apprised to the officer by, the then, CO 48 Sqn.

b. Despite having been so informed the officer got married to Ms. Trilochan Kaur Bhatia on 24 Jun 12 i.e. on 97th day from the date of his application for marriage i.e. 20 Mar 12.

c. The officer's application dated 30 May 13 for PSS was duly considered and not recommended by the Board of Officer held at Air HQ. The said BOO was subsequently approved. Accordingly, HQ WAC, vide its letter dated 30 Oct 13, informed 12 Wg about the same, for further intimation to the officer.

d. In terms of Paras 6.1 of IAP 3904, "Serving Air Force Personnel and their spouse are prohibited from applying for or acquiring immigration Visas The detailed information on the subject is given in MoD letter No. 16(55)/86/D (Coord) dated 25 May 89"

e. Para 6.2 of the said IAP stipulates that "No personnel of the Indian Air Force shall either apply or permit his/her spouse to apply for foreign nationality or an immigration Visa of a foreign country or otherwise seek immigration".

f. Para 7.3 (d) of the said IAP, which lays down restrictions on the spouse of a Defence personnel, stipulates:-

"May take up employment in foreign commercial organisations with prior permission of appropriate authority (Air HQ (Dte of Int))."

g. Para 7.5 of the said IAP reads as follows:

"There may be cases where the spouse may be working in prohibited organisations mentioned at Para 7.3(a), prior to his/her marriage with the Air Force personnel in such cases, the spouse should resign from these organizations forthwith and the fact is to be brought to the notice of Dte of int and JAG (Air) immediately. However, in cases where the spouse may be working in organization mentioned at Para 7.3 (b), (c) and (d) prior to his/her marriage, the cases are to be processed on Personnel channels for approval by appropriate authority."

h. Para 5 of AFO 04/2009 stipulates as follows:-

"Any air warrior desirous of marrying an Indian national working in a foreign mission or in any foreign organisation including commercial organisations whether situated in India or outside is to obtain prior permission of the AOP before marriage. The rules governing employment of spouses of airwarriors in foreign mission/related organisations, international organisations and foreign commercial organisations inside/outside India are contained in chapter VII of IAP 3904. Application for marriage with indian national employed in similar organisations will be considered in the light of the said provisions Applications in this regard are to be submitted to Air HQ (DPS) through normal channel as per proforma at Appendix 'B' to this Order for obtaining permission from the AOP along with the following documents:-

(a) person with whom marriage is intended. Three copies of a recent passport size photograph of the

(b) An undertaking stating that his/her proposed spouse will not apply for/acquire foreign immigration/citizenship."

9. AND WHEREAS, having considered the facts & circumstances of the case in entirety, the Central Government is of the view that:-

a. Though, the officer has contended that Air HQ letter No. Air HQ/23498/562/40/PS dated 03 May 12 (Wrongly mentioned as 03 May 13 by the officer), disallowing his request, was not communicated to him whereas, the officer was informed of the same by the then CO, 48 Sqn. Notwithstanding the same, it is pertinent to mention that the officer chose to marry the said lady without grant of any permission in this regard. Such action on his part appears to be deliberate in view of the fact that he married on 97th day of his applying for marriage as against his contention that as per AFO 04/2009, if the application is not finalized within a period of 120 days, the consent is deemed to have been given. In these circumstances, the contention that his application was not specifically rejected does not have merit and is not tenable,

b. The officer's application for PSS was rejected. In rejection of his said application, due procedures were followed and no prejudice can be said to have been caused to the officer in this regard. Notwithstanding the above, the issue regarding rejection of his request for PSS has no relation to the officer's solemnizing the said marriage without permission.

c. In terms of Paras 7.3(d) and 7.5 of IAP 3904, employment of spouse in certain foreign commercial organization is permitted, however, permission of appropriate authority is required for the same. In the instant case, no such permission was sought by the officer. Further, a mere mention of such employment of proposed spouse in application of marriage submitted by the officer, cannot be construed as seeking permission for such employment.

d. The contention of the officer that the fact of marriage was known to the unit authorities, cannot set the omission of the officer right as the unit authorities were not competent to grant or deny any such permission to the officer.

e. The officer has also raised the issue that the GoI/MoD letter dated 25 May 89 does not prohibit an officer from marrying a person already holding immigration status and that he had informed the Service regarding these facts, prior to solemnizing the marriage. In this regard, the contents of the Govt of India letter dated 25th May 1989 are very clear and the case of the officer squarely falls under the provisions of said letter. The relevant portions thereof, are reiterated as under:-

i. Para (2) (1). "No member of the Defence Services shall either apply or permit his/her spouse to apply for foreign nationality or an immigrant visa of a foreign country or otherwise seek emigration. He/She shall also not permit his/her dependant to do so without prior permission of the Government

ii. Para 2 (ii). "Members of Defence Service marrying a person holding immigration status in a foreign country or where his/her spouse or any of his/her dependants had, without his/her prior knowledge applied for an immigrant visa of a foreign country or acquired foreign nationality; report the matter forthwith to the services Headquarters as soon as he/she becomes aware of it. The services of an officer/personnel whose spouse has applied for or acquired the citizenship of a foreign country shall be liable to be terminated."

iii. Para (2) (iii). "Acceptance of employment in foreign missions and foreign organizations abroad by members of the family of Defence Service officers/personnel, will be subject to the conditions prescribed by Government from time to time."

iv. Para 3. "Members of the Defence Services whose spouses/dependents are holders of citizenship or immigration visa of a foreign country or have immigrated to a foreign country at the time of issue of this communication shall report the matter forthwith to the Services Headquarters."

v. Para 5. "Services Headquarters will obtain the orders of the Government through their respective administrative sections in the Ministry of Defence in each case referred to in paras 2(1), 2(ii) and 3 above."

f. The officer's good past service record, his participation in various operations, ill health of his mother-in-law and other family brought circumstances, as brought out by the officer in his replies, cannot absolve him from consequences of his misconduct.

10. AND WHEREAS, considering the long association and Service rendered by the officer to the IAF in various calamities and Ops, the Central Govt. has decided to take a lenient view in the case of the officer.

11. NOW THEREFORE, in view of the foregoing, the Central Government, in exercise of the powers conferred by Section 19 of the Air Force Act, 1950 read with Rule 16 of the Air Force Rules, 1969, orders that Wg Cdr Anant Saxena (24237) F(P), be removed from the Service, albeit after recovery of service dues, if any.

Signed at New Delhi, this 18th day of September, 2015.

(Y.S. Awana)
Under Secretary to the Govt. of India.

Copy to:-

Chief of the Air Staff : (in triplicate)	*For communication to the officer through (in triplicate) staff channel with necessary administrative Instructions and for further action in accordance with the existing procedure.*

19. On an analysis of the aforesaid Dismissal Order, and on careful study of the relevant IAP and Air Force Order, we find that the grounds raised herein are similar to those raised in the reply to Show Cause Notice. We observe from the impugned Order, issued by the Ministry of Defence, supported by documents and letters on record, originates from an unauthorized marriage solemnized by applicant with a foreign-based individual possessing U.S. immigration status.

20. The core of the misconduct lies in the applicant's failure to secure the mandatory prior permission from the Competent Authority, as required under **AFO 04/2009** and **IAP 3904**. The record indicates that while the applicant did submit an application on 20 March 2012, this request was

expressly rejected by Air HQ on 03 May 2012 on the grounds that spouses of defense personnel are prohibited from acquiring foreign immigration status. Despite this rejection being communicated to his unit, the applicant proceeded to marry on 24 June 2012.

21. A critical component of the Order is the rebuttal of the applicant's "deemed consent" argument. The applicant contended that since his application was not finalized within 120 days, consent was implied under AFO 04/2009. However, the Government found this defence untenable, noting that the applicant solemnized the marriage on the 97th day following his application. By acting before the expiration of the 120-day window, the applicant effectively bypassed the regulatory framework, rendering his claim of "deemed approval" legally void and suggestive of a deliberate attempt to circumvent the chain of command.

22. The Order further addresses the applicant's non-compliance with **Para 7.3(d) and 7.5 of IAP 3904** regarding his spouse's employment in a foreign commercial organization. The Government notes that even if such employment were permissible in theory, it required specific, prior approval from the Directorate of Intelligence, which the applicant failed to seek. The mere mention of such employment in a marriage application does not substitute for a formal request for authorization of a spouse's foreign business interests. Consequently, the applicant was found to be in persistent violation of service jurisprudence concerning foreign affiliations.

23. Regarding the principles of natural justice, the Order demonstrates that the applicant was served with a Show Cause Notice (SCN) on 03 June 2014 under **Section 19 of the Air Force Act, 1950**. While the applicant initially claimed he was not provided with the underlying rejection letters, the Government ensured fairness by providing the requested documents and allowing an additional reply, which the applicant submitted on 12 November 2014. This procedural transparency confirms that the applicant was given an ample and fair opportunity to defend his actions before the final determination was reached.

24. The Government also evaluated the applicant's personal circumstances, including his mother-in-law's medical condition and his spouse's mental stress. However, the Order maintains a clear distinction between compassionate grounds and statutory compliance. It explicitly states that the rejection of his Premature Separation from Service (PSS) and his family difficulties cannot "absolve him from consequences of his misconduct". The sanctity of military discipline and the potential security implications of foreign immigration status are treated as paramount over individual domestic exigencies.

25. Finally, in our opinion, the Order reflects a balanced exercise of discretionary power. While the misconduct warranted dismissal, the Central Government took a "lenient view" in light of the applicant's 17.5 years of dedicated service and participation in key operations like Op Parakram and Op Safedsagar. Consequently, the penalty was mitigated

from "dismissal" to "removal from service." This indicates that the impugned Order was not an act of administrative arbitrariness but a measured response to a clear breach of military discipline.

26. At this point, we find it essential to address another pertinent contention of the applicant, with respect to his leave, for which we refer to the Personal Application for permission to proceed to foreign country during leave dated 23.03.2012 reproduced as under:

RESTRICTED

Appendix C
Refer to para B of AFO 09/2001)

PERSONAL APPLICATION FOR PERMISSION TO PROCEED TO FOREIGN COUNTRY DURING LEAVE

Wg Cdr Anant Saxena (24237-R) F(P)

48 Sqn AF
xxx xxx
23 Mar 12

Commanding Officer
48 Sqn AF
xxx xxx

PERMISSION TO VISIT FOREIGN COUNTRY DURING LEAVE

Sir.
I may please be permitted to visit foreign country as per the details given below, during my service leave from 18 Jun 12 to 20 Jul 12 with Px-02 and Sx 02.

(a)	*Unit: 48 Sqn, AF*	*Command: WAC, IAF*
(b) (c)	*xxx*	*xxx*
(d)	*Purpose of visit*	*Excursion (Post*

		marriage vacation)
(e)	*Countries proposed to be visited*	*France, USA*
(f)	*Particular part of the country/countries proposed to be visited*	*Paris (France) Goodyear (USA), Atlanta (USA)*
(g)	*Approximate date of entry into/unit from the country*	*28 Jun 12/02 Jul 12: France 03 Jul 12/ 20 Jul 12: USA*
(h)-(m)	*xxx*	*xxx*
(m)	*Composition of the party. (including servants, if any)*	*Self, Wife (Trilochan Kaur Bhatia) (Proposed date of marriage 24 Jun 12)*
(n) – (o)	*xxx*	*xxx*

Sd/-
Yours faithfully

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27. From the aforesaid application, we find that the Personal Application for permission to visit a foreign country dated 23 March 2012 reveals a pre-meditated and calculated intent to bypass the regulatory framework of the Indian Air Force. Submitted merely three days after his formal request for marriage permission dated 20 March 2012, the applicant sought leave from 18 June 2012 to 20 July 2012 for an "Excursion (post marriage) vacation". By his own admission in the leave application, he intended to

marry on 24 June 2012, which fell on the 97th day following his initial application. Since the regulatory "deemed consent" only matures after a period of 120 days of administrative silence, the applicant's pre-meditated decision to proceed on the 97th day constitutes a proactive breach of service discipline. Consequently, the applicant cannot seek the protection of a "deeming" provision when his own documented timeline proves he never intended to wait for the statutory period to elapse, thereby rendering his dismissal a necessary consequence of deliberate misconduct

28. Upon a comprehensive review of the records, and the contentions raised by the applicant, we are of the view that the primary duty of an officer in the Indian Air Force is to adhere strictly to the specialized code of conduct that governs them. The applicant's decision to solemnize a marriage with a foreign immigration status holder, in the face of an active regulatory prohibition and without waiting for the statutory period for "deemed consent" to lapse, constitutes a clear and willful breach of discipline. The "deemed consent" plea is particularly egregious as it was invoked prematurely, revealing a calculated disregard for the very regulations the applicant now seeks to rely upon.

29. The contention that the rejection of the marriage application was not personally communicated to the applicant is insufficient to vitiate the disciplinary proceedings. In military service, the communication of orders to a Unit Commander is often deemed constructive notice to the officer. Furthermore, the applicant's own actions - specifically marrying on the

97th day - demonstrate that he did not wait for the formal conclusion of the administrative process. This Court cannot condone a "fait accompli" approach where an officer violates a policy first and then seeks to regularize the violation through legal technicalities.

30. The security and integrity of the Armed Forces necessitate stringent regulations regarding foreign influences and immigration. **Para 6.2 of IAP 3904** and the **MoD letter dated 25 May 1989** are not mere administrative suggestions; they are vital safeguards against potential conflicts of interest and security vulnerabilities. By marrying an individual with established commercial and immigration ties to the United States without the requisite clearances, the applicant placed himself in a position that the Government of India has reasonably determined to be incompatible with continued military service.

31. Furthermore, we observe that the principles of natural justice have been scrupulously followed by the respondents. The issuance of a Show Cause Notice, the provision of internal documents, and the acceptance of multiple supplementary replies ensure that the administrative action was not hit by procedural impropriety. The decision-making process involved a detailed examination of the applicant's past service record and his personal grievances, proving that the competent authority applied its mind to all mitigating factors before passing the final order.

32. In conclusion, the penalty of "removal from service" is neither disproportionate nor shocking to the conscience of this Tribunal. In fact,

the Government has already shown significant leniency by opting for removal instead of a more severe dismissal, thereby acknowledging the applicant's past operational contributions. Military discipline does not permit selective adherence to rules based on personal convenience or compassionate grounds.

33. Before parting, it is essential to observe that the factual analysis on which the judgement of Hon'ble Supreme Court in ***Sqn. Ldr. (Retd.) Navtej Singh vs. Union of India and ors. [Civil Appeal Dairy. No. 41636 of 2015]*** is based upon, is different from the factual matrix of the present case. In ***Navtej Singh (supra)*** the Supreme Court noted that the department "did not respond for more than 120 days". Conversely, in the case of applicant, the Air HQ issued an express rejection on **03 May 2012**. The fact that this rejection was communicated to the officer by his CO before he solemnized the marriage on the 97th day creates a scenario of willful disobedience, which was entirely absent in the ***Navtej Singh (supra)*** matter. Further, the Supreme Court noted that once an officer is released, the Air Force Act ceases to govern their personal life in the same manner. However, applicant was **removed** from service specifically because his conduct *while governed* by the Act was found to be a "misconduct". To apply ***Navtej Singh (supra)*** here would effectively immunize serving officers from disciplinary consequences for violating mandatory service regulations, provided they eventually retire. This would undermine the very "military discipline" the Air Force Act seeks to uphold.

34. Furthermore, the ***Navtej Singh (supra)*** case was limited by the Supreme Court to whether a marriage could be recognized for *"post-retirement benefits, medical facilities and family pension"*. It did not deal with the validity of a dismissal or removal from service. In the present case, the applicant is challenging a substantive disciplinary penalty imposed under Section 19 of the Air Force Act, 1950. The Supreme Court specifically noted that in ***Navtej Singh (supra),*** "no disciplinary action was initiated or taken against him", whereas applicant was subject to a formal Show Cause Notice and subsequent removal.

35. In view of the aforesaid analysis, we are of the opinion that the Removal Order does not warrant interference, and the present application is liable to be dismissed.

36. Hence, the present OA 1553/2018 is dismissed as devoid of merits.

37. Miscellaneous application(s), if any, are disposed off.

38. No order as to costs.

Pronounced on this 24 th day of December, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

aft/yb

(Ms. RASIKA CHAUBE)
MEMBER (A)