

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.98 of 2012

Wednesday, the 12th day of June, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Binod Sharma (S.No.621688 'R' JWO)
Son of Late Feku Singh
Unit: MTTI, AF, AFS, Avadi
Chennai-600055.

... Applicant

By Legal Practitioners:
M/s. M. Chidambaram, R. Meena,
AQ Choudhury, R. Pavithra

Vs.

1. Union of India,
Rep. by the Chief of Air Staff
Air Headquarters (Vayu Bhavan)
Rafi Marg,
New Delhi-110 106.
2. Air Officer Commanding
Air Force Record Office
Subrata Park
New Delhi-110010.
3. Air Officer Commanding
Air Force Central Accounts Office
Subrata Park
New Delhi-110010.

4. Air Officer Commanding
Training Command, Air Force.
Bangalore-560006.
5. The Commanding Officer
MTTI, Air Force, AF Station, Avadi
Chennai-600055.
6. Smt. Gayatri Devi
D/o-Late Parmeshwar Sharma
Vill- Natthupur, PO- Lai, District- Patna
Bihar- 801103

... Respondents

Respondents No.1 to 5
By Mr.B.Shanthakumar, SPC

Respondent No.6 – No appearance

ORDER

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

1. This application is filed by the applicant seeking to set aside the impugned Order No.19/2012 dated 13.9.2012 granting maintenance allowance of Rs.8,000/- per month to the 6th respondent from the pay and allowances of the applicant and the communication Order dated 28.9.2012 issued by the 5th respondent pending disposal of Maintenance Case No.100(M) of 2006 on the file of Principal Judge, Family Court, Patna, with costs.

2. The case of the applicant as stated in the application would be as follows :-

The applicant was enrolled as Airmen in Indian Air Force on 20.8.1977 and is presently serving at MTTI, AF, Avadi, Chennai-600055, the 5th respondent. The applicant married the 6th respondent on 27.10.1984 as per Hindu rites and customs and they did not have any issues for about 9 years. The applicant took 6th respondent to various gynaecologists for treatment, but every effort went in vain. Due to the said reason, difference of opinion arose in between the applicant and the 6th respondent which resulted in frequent quarrelling and discomfort. The worried parents of the applicant started serious consideration of second marriage of the applicant. The 6th respondent left from the matrimonial house voluntarily and started living with her parents. She also represented to the then Commanding Officer, No.4, Air Force Range Unit (AFRU) of the applicant on 4.5.1993 for the grant of maintenance. Due to intense mediation between the family of the 6th respondent and the applicant, restitution was effected. The 6th respondent also executed an undertaking/affidavit before the Executive Magistrate, Patna, on 22.9.1993 and the said complaint dated 4.5.1993 was withdrawn by her. Even after the sworn affidavit executed by the 6th respondent, she never lived with the applicant and she remained living separately for more than 19 years. She filed a Maintenance Case in MCNo.104 (M) of 1994 before the Principal Judge, Family Court, Patna, under Section-125 of Cr.PC for a

direction to the opposite party therein (namely the applicant) not to take voluntary retirement from the Indian Air Force, not to receive service benefits, which was rejected by the learned Judge, on 28.2.1995. However, the said maintenance case was contested by the applicant in other respects and compromise was reached between the applicant and the 6th respondent and as per the compromise, the Court had passed Order on 11.4.1996 with a direction to pay a sum of Rs.475/- per month as maintenance to the 6th respondent with effect from April, 1996, by 30th of every English calendar month. The 6th respondent, thereafter, visited the applicant's house and took all her belongings including gold ornaments on 11.1.2002 and she executed a list of items taken by her, in favour of the applicant. The applicant was paying maintenance of Rs.475/- per month to the 6th respondent as per the Order of Principal Judge, Family Court, Patna, dated 11.4.1996 from April, 1996 and continued to pay till March, 2011, which was not disputed by the 6th respondent in her complaint to Respondents 1 to 5. The applicant claimed the complaint sent by the 6th respondent was fictitious and even it was not signed by her. The 6th respondent has filed Maintenance Case No.100 (M) of 2006 before Principal Judge, Family Court, Patna, against the applicant for enhancing the maintenance amount from Rs.475/- as ordered earlier and the same is pending before the said Court. The said fact was not disclosed by the 6th respondent in her complaint and, therefore, the impugned Order dated 13.9.2012, in Order No.19/2012 is not only

illegal, but also biased. The 5th respondent had issued a Show Cause Notice dated 26.7.2011 on the basis of the said complaint of 6th respondent and the same was duly replied by the applicant on 27.7.2011. During August, 2011, the Court of Inquiry summoned the 6th respondent and the applicant also participated in it. At the end of the Court of Inquiry, the applicant was served with Show Cause Notice dated 25.6.2012, to which the applicant replied on 30.6.2012. The applicant was not served with the copy of Court of Inquiry proceedings or its findings. The 5th respondent has recommended the grant of maintenance allowance to the 6th respondent as per Para 12 of Air Force Order 24/2000 dated 6.10.2000 from and out of the pay and allowances of the applicant and the said Order was recommended by the 4th respondent and the 1st respondent also issued appropriate orders i.e. Order No.19/2012 dated 13.9.2012. The said Order directs the applicant to pay maintenance allowance of Rs.8000/- per month from his pay and allowances with effect from October, 2012, and directed the 3rd respondent to deduct and remit the same to the bank account of 6th respondent by 30th day of every month for a period of five years or till re-union or divorce or grant of maintenance allowance to the 6th respondent by the Court or material change in circumstances and facts or discharge of the JWO from service whichever is earlier. It was communicated to the applicant by the 5th respondent on 28.9.2012. The 6th respondent had presented the complaint for getting 50% of the applicant's retirement benefits and to know his

present address and his salary, and not for the grant of maintenance allowance as she had filed an application in Maintenance Case No.100 (M) of 2006 on the file of Principal Judge, Family Court, Patna, but the 5th respondent had suo moto conducted the enquiry in a biased manner and had granted the maintenance allowance of Rs.8000/- per month and the 1st respondent passed an Order in the impugned Order No.19/2012 dated 13.9.2012 under Section-92(i) of Air Force Act, 1950, read with Rule-162 of Air Force Rules, 1969, and Para 12 of AFO 24/2000 dated 6.10.2000 without any application of mind, despite the applicant honestly intended to settle the claim of 6th respondent by offering Rs.5 lakhs. The claim of the 6th respondent before the Respondents 1 to 5 would not arise since her remedy lies before the competent Family Court which passed an Order and the case is pending for enhancement of maintenance allowance. The 6th respondent is not entitled for any maintenance amount as per the Order of Respondents 1 to 5 since she did not live jointly together with the applicant despite the applicant made so many efforts prior to marrying another lady with the consent of the 6th respondent. The applicant is living along with other dependent family members and he has to maintain them with one man's salary. The remedy available to the 6th respondent is to pursue the case pending before the Principal Family Court, Patna, and not before the Respondents 1 to 5. It is, therefore, prayed that the impugned Order No.19/2012 dated 13.9.2012 passed by the 1st respondent granting

maintenance allowance of Rs.8000/- per month to the 6th respondent from the pay and allowances of the applicant and the communication Order No. MTTI/C101/1/3/P1 dated 28.9.2012 issued by the 5th respondent may be quashed and set aside pending disposal of MC No.100 (M) of 2006 on the file of Principal Judge, Family Court, Patna, and thus the application be allowed.

3. The objections raised by the Respondents 1 to 5 in the Reply Statement would be as follows :-

The applicant was enrolled in Indian Air Force on 20.8.1977 and his date of birth is 12.1.1961. He got married in 1984 with Smt. Gayatri Sharma, D/o. Late Shri Parmeshwar Sharma. The applicant had no issue for about 10 years from the date of his marriage and he married another lady, namely Smt. Munni Kumari, D/o. Sudama Piyush in the year 1993. The 6th respondent complained to Air Force authorities when she had knowledge about the second marriage of the applicant. However, she withdrew the complaint against the applicant. The 6th respondent filed a case before Family Court, Patna, in the year 1994, which was also withdrawn by her on mutual agreement with the applicant. As per the agreement reached in between the applicant and the 6th respondent, a sum of Rs.475/- per month was paid to 6th respondent as maintenance allowance. The said maintenance allowance was also stopped for the last two to three years and, therefore,

the 6th respondent submitted a representation to the Office of the 5th respondent on 6.4.2011 in Annexure R-1. She had complained that the applicant re-married in the year 1993 with one Smt. Munni Kumari. She also requested for the grant of 50% of his salary, pension, gratuity etc. when he retires. On the representation, the Air Force authorities investigated the matter and found that the applicant entered a plural marriage. A Court of Inquiry was ordered on 8.8.2011 to ascertain the fact of plural marriage. The applicant was also issued Show Cause Notice dated 26.7.2011 and the applicant had also replied on 27.7.2011 in which he has stated that he married Gayatri Sharma, the 6th respondent, and had been paying her maintenance amount and since the problems between them were settled and they started living together, he discontinued the payment of maintenance allowance.

The applicant also submitted Black and White joint photographs in the year 1984 at 31 MCU AF. Subsequently, in the year 2001, he again submitted a joint photograph (Coloured) at 10 Squadron Air Force. Both the photographs produced by the applicant were sent to Forensic department by the Court of Inquiry to ascertain the fact as to whether both the photographs belong to the same lady. The Forensic Science department in its reply dated 14.10.2011, confirmed that the ladies in both the photographs are different women. The Court of Inquiry after investigation found that the applicant

had entered into plural marriage and also falsification of service documents by submitting coloured photograph of Smt. Munni Kumari, who was not his legally wedded wife. Thus it recommended administrative action as per para 578(f) of the Regulations for the Air Force 1964 for entering into plural marriage and disciplinary action under Section-86 of AF Act, 1950 and it is pending for concurrence of the Commanding Officer. The Respondent No.6 forwarded another representation produced in Annexure R-5 and requested for payment of maintenance allowance. On the foot of the complaint, 5th respondent issued a Show Cause Notice dated 25.6.2012 and the applicant in his reply dated 30.6.2012 denied the plural marriage by stating that he married 6th respondent and since she could not conceive any child in the early days of their marriage, there was misunderstanding between them and he left 6th respondent at her house and was paying Rs.475/- per month until the differences were settled and since the 6th respondent started living with the applicant and later on conceived and had three children, he did not pay the maintenance allowance. Not convinced with the reply, the Commanding Officer recommended for a Court of Inquiry and finally the maintenance allowance was granted as per Para 12 of AFO 24 of 2000.

The applicant had submitted various contrary statements before the Court of Inquiry as well as before this Tribunal. He has produced two photographs in which the applicant was photographed with two different women, but the applicant stated that they are the same woman, namely

Gayatri Sharma. The applicant had also lied that his estranged wife Gayatri Sharma joined with him and, therefore, he stopped payment of maintenance allowance and he also procured three children through her. The applicant had deliberately suppressed the fact that he contracted second marriage with Smt. Munni Kumari and contracted plural marriage, through her only he got three children. On one occasion, the applicant said that his wife Gayatri Sharma took away all her belongings along with her father on 11.1.2002, but at the same time, he stated that he got children through her during the said period. The factum of filing of Maintenance Case No.100 (M) of 2006 for enhancement of maintenance allowance before the Principal Judge, Family Court, Patna, was not disclosed either by the applicant or by the 6th respondent during the Court of Inquiry proceedings. Therefore, the applicant is not entitled to challenge the Order passed by the 1st respondent in granting Rs.8000/- per month towards maintenance of the 6th respondent. Orders were passed by Respondents 1 to 5 on the maintenance claim of the 6th respondent since the case of plural marriage should not delay the processing of the maintenance as per Para-4 of AFO 24/2000. The case of the maintenance allowance was processed on the basis of the representation of the 6th respondent after issuing Show Cause Notice to the applicant and on consideration of the reply of the applicant and, therefore, the claim of the applicant before the Tribunal that the impugned Order passed by the 1st

respondent has to be set aside, and cannot be done at this stage. Therefore, the application filed by the applicant be dismissed with costs.

4. The points for consideration on the above pleadings would be as follows :-

- 1) Whether the impugned Order No.19/2012 dated 13.9.2012 granting maintenance allowance of Rs.8000/- per month to the 6th respondent from the pay and allowances of the applicant passed by the 1st respondent and the communication Order No.MTTI/C101/1/3/P1 dated 28.9.2012 issued by the 5th respondent are liable to be quashed ?
- 2) Whether the reliefs sought for by the applicant are affected by suppression of facts ?
- 3) To what relief the applicant is entitled for ?

5. Heard Mr. M. Chidambaram, Learned Counsel for the applicant, and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Mr. R.K. Shukla, Learned MWO, appearing for the respondents 1 to 5.

6. The Learned Counsel for the applicant would submit in his argument that the applicant was enrolled in the Indian Air Force on 20.8.1977 and now he is posted at MTTI, AF, Avadi, Chennai, the 5th respondent. He would submit that the applicant married the 6th respondent on 27.10.1984 as per Hindu rites and customs. However, there was no issue out of the said wedlock for about 9 years and due to the said reasons, there was a grave indifference in between the spouses. The Learned Counsel would confirm that the applicant had indeed married a second time thus entering into plural marriage. He would also submit that the 6th respondent left from the matrimonial house voluntarily and started living with her parents on and from 4.5.1993 and she had complained to the then Commanding Officer and sought for maintenance. However, the matter was compromised in between the applicant and the 6th respondent and she also executed an undertaking before the Executive Magistrate, Patna, on 22.9.1993 and thus she withdrew the complaint. He would also submit that even after the said incident, the 6th respondent never lived with the applicant for more than 19 years. However, she filed a maintenance case in MC No.104(M)/1994 before the Principal Judge, Family Court, Patna under Section-125 Cr.PC along with certain other reliefs that the applicant should not take voluntary retirement from the Indian Air Force and his service benefits should not be handed over to him. However, the said prayers of the 6th respondent were found outside the scope of Section-125 Cr.PC and were not granted. The applicant had also

compromised the case agreeing to pay a sum of Rs.475/- per month as maintenance to the 6th respondent with effect from April, 1996, and thereby agreed to pay the said maintenance on or before 30th day of every English calendar month without fail. The articles of the 6th respondent were also taken away by her after executing a Muchilika in favour of the applicant. The applicant paid the maintenance amount up to March, 2011. The applicant tried his level best to rejoin with the 6th respondent, but she was not interested, but had given consent to the applicant to go for second marriage. The applicant was also having other family members, who depend upon his salary. He would further submit that the 6th respondent had again filed a maintenance case in MC No.100(M)/1996 before the Principal Judge, Family Court, Patna, for enhancement of the maintenance amount from Rs.475/- and the same is pending before the said Court. Without disclosing the facts, the 6th respondent had preferred fictitious complaint in March, 2011, and the 5th respondent issued a Show Cause Notice dated 26.7.2011 and the applicant replied for the same on 27.7.2011. Apart from the complaint given during March, 2011, the 6th respondent had given yet another complaint and the 5th respondent had convened a Court of Inquiry and the applicant was served with Show Cause Notice dated 25.6.2012, which was replied by the applicant on 30.6.2012. He would also submit that without furnishing copies of the proceedings of the Court of Inquiry, the 5th respondent had recommended maintenance allowance to the 6th respondent at Rs.8000/- per

month under Air Force Order 24/2000 dated 6.10.2000. The said Order was ratified by the respondents 1 to 4 and the 1st respondent had passed Order directing the applicant to pay a sum of Rs.8000/- per month from and out of his pay and allowances to the 6th respondent on 13.9.2012 under Section-92(i) of the Air Force Act. He would further submit that the respondents 1 to 5 are not entitled to pass any order on payment of maintenance allowance from and out of the pay and allowances of the applicant to the 6th respondent when there was a proceeding pending before the Principal Family Court, Patna in MC No.100(M)/2006. He would also submit that the respondents 1 to 5 could at best executed the Order of the Court either by attaching the pay and allowances of the applicant as per Court's direction or pass a direction to pay such maintenance as per the Order of the Court. Respondents 1 to 5 cannot pass an independent Order directing the payment of maintenance allowance when there is a maintenance proceeding pending before competent Court. The provisions of Air Force Order 24/2000 was not understood properly by the respondents 1 to 5, but an Order of payment of maintenance allowance in favour of the 6th respondent was passed against the applicant, which is illegal. Therefore, he would request us to quash the Order passed by the 1st respondent in Order No.19/2012 dated 13.9.2012 directing the maintenance allowance at Rs.8000/- per month from the pay and allowances of the applicant to the 6th respondent and the communication Order passed by the 5th respondent in view of the pendency

of MC No.100(M)/2006 on the file of Principal Judge, Family Court, Patna, and thus the application may be allowed.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant is not definite at his stand while submitting his reply to the Show Cause Notices issued to him and also during the Court of Inquiry proceedings. He had put forth contrary statements regarding his second marriage, name of first wife, and with regard to the maternity of his three children. He would also submit that the applicant lied before the Court of Inquiry and also before this Tribunal and the contrary statements put forth before both the Court of Inquiry and this Tribunal would be amounting to suppression of facts. He would further submit that the applicant may not be granted with any relief even if entitled to, since he had come with unclean hands. He would also submit that the applicant or the 6th respondent did not disclose about the maintenance case in MC No.100 (M)/2006 pending before the Principal Family Court, Patna, at the time of the proceedings before Court of Inquiry. The applicant himself had suppressed the pendency of the said proceedings and invited an Order of payment of maintenance allowance to his wife. He would also submit that when the proceedings of the maintenance case before the Family Court, Patna, were not disclosed during the submission of reply to Show Cause Notices and Court of Inquiry proceedings, the 5th respondent might have presumed that there was no

maintenance case proceedings and proceeded to pass orders in accordance with law. He would further submit that the applicant had come forward with new facts in this application and he disclosed about the pendency of the maintenance case in MC No.100 (M)/2006 now only. He would also submit that the earlier proceedings filed by the 6th respondent against the applicant in MC No.104(M)/1994 before Principal Judge, Family Court, Patna, was also not disclosed in the replies to Show Cause Notices, but was casually said in the evidence of the applicant and the Order passed by the Court was not honoured by the applicant from March, 2011, which drove the 6th respondent to make a representation before the 5th respondent for maintenance allowance. He would also submit that the respondents 1 to 5 are having jurisdiction to fix the maintenance allowance as per Para-2 of AFO 24/2000 when the Order of the Court towards payment of maintenance was not honoured in order to render justice. He would further submit that the documents comprising the Order passed by the Principal Family Court, Patna, in MC No.104 (M)/1994 was not produced for perusal of the Court of Inquiry, but the applicant would speak to the effect that the said case was settled in between parties and as per agreement, he was sending the maintenance of Rs.475/- per month to his wife Smt. Gayatri Sharma. He would also submit that when the Court of Inquiry was kept in dark regarding the maintenance case, the Court of Inquiry could pass an Order of maintenance allowance as per Paras-9 to 18 of AFO 24/2000. If really, the

maintenance cases pending before the Courts were brought to the notice of Court of Inquiry, suitable orders would have been passed as per AFO 24/2000. He would also submit that the applicant is guilty of not only suppression of facts, but also speaking lies for the purpose of defeating the rights of the 6th respondent. The applicant cannot get any remedy as he had come forward with bundle of lies and unclean hands. Therefore, he would request us to dismiss the application.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the documents produced.

9. **Points 1 & 2:** The applicant was enrolled as Airmen in Indian Air Force on 20.8.1977 and is now posted at MTTI, AF, Avadi, Chennai-600055, the 5th respondent herein. The claim made by the applicant in this application is for setting aside the Orders passed by the 1st respondent in Order No.19/2012 dated 13.9.2012, and also the communication of the said Order passed by the 5th respondent. In the Order passed by the 1st respondent, the applicant was ordered to pay a sum of Rs.8000/- per month towards maintenance allowance to the 6th respondent, who being the wife of the applicant. The contention of the applicant would be that the respondents 1 to 5 should not have adjudicated the claim of maintenance of the 6th

respondent since the 6th respondent herself had applied for enhancement of maintenance before the Principal Family Court, Patna, and the respondents 1 to 5 have no jurisdiction to fix the maintenance allowance when it is pending before the Principal Judge, Family Court, Patna.

10. The facts that the applicant married the 6th respondent, namely Smt. Gayatri Devi, daughter of Late Parmeshwar Sharma, as per Hindu rites and customs, is not disputed. However, the applicant had described the 6th respondent as Gayatri Sharma in several places, despite, he had admitted that his wife's name is also Gayatri Devi in his reply to Show Cause Notice issued by the 5th respondent. In this application, he had categorically admitted that he had married for the second time with another lady and begot three children out of the said wed lock and he has to maintain them along with the 6th respondent. The said admission was reiterated in the arguments of his Learned Counsel that he married one Smt. Munni Kumari as his second wife with the consent of the 6th respondent. However, the said fact was not accepted by the applicant during the course of the Court of Inquiry proceedings. The case of the applicant before the Court of Inquiry, and in the reply to Show Cause Notice dated 26.7.2011 was that the maintenance allowance fixed at Rs.475/- per month was stopped by him since his wife Mrs. Gayatri Devi along with their children, was residing with him at Avadi. However, the case of the applicant before Court of Inquiry

was that he did not marry any lady, named Munni Kumari as alleged by the Headman of Gram Panchayat. In the said reply to Show Cause Notice, he stated that after the birth of children to his wife, the relationship between him and his wife, 6th respondent, started improving gradually and they were living a normal family life.

11. In yet another reply to the Show Cause Notice dated 30.6.2012, he would state that the name of his wife was not Smt. Gayatri Devi, daughter of Parmeshwar Sharma, but her name was Mrs. Gayatri Sharma, daughter of Parmeshwar Sharma, and she was living with him along with three children. He had also stated that his wife's name was not Munni Kumari alias Lilawati, daughter of Shri Sudama Piyush and that he did not know any Munni Kumari alias Lilawati. On a careful perusal of the stand taken by the applicant in the Show Cause Notice, that he did not marry one Munni Kumari in a second marriage and his wife Gayatri Sharma had three issues and he was living with his wife Gayatri Sharma and three children, it would contradict the present case. In his evidence before the Court of Inquiry, he spoke about the payment of Rs.475/- to his wife as per an agreement reached before the Court, which was continued and was stopped after he joined the 6th respondent and were blessed with children. He had also spoken in his evidence before Court of Inquiry to the effect that he was living with his wife Smt. Gayatri Sharma and their children happily and the averments regarding

his second marriage were wrong. In the backdrop of the case taken by the applicant before the Court of Inquiry, when we scrutinize the proceedings of Court of Inquiry and the Order passed thereon, we could see that the maintenance proceedings stated to have been filed by the 6th respondent in MC No.104(M)/1994 was not produced nor any details have been given as to the passing an order of maintenance in favour of the 6th respondent. The quantum of maintenance amount at Rs.475/- was said to have been reached in an agreement between the applicant and the 6th respondent and the same was also stopped since the applicant and the 6th respondent rejoined and begot three children and were living happily. The pendency of maintenance case in MC No.100(M)/2006 for enhancement of the maintenance was neither informed by the applicant nor by the 6th respondent to the Court of Inquiry. The Court of Inquiry, which was purely to adjudicate on the fact and evidence produced before it by the applicant and the 6th respondent, could adjudicate the issue before it only through the materials placed before it. The pendency of maintenance proceedings before the Family Court, Patna, were not disclosed before the Court of Inquiry and, therefore, it had adopted the provisions in Paras-9 to 18 of AFO 24/2000 and passed an Order of maintenance at Rs.8000/- per month payable from and out of the pay and allowances of the applicant.

12. Whether the said Order could be set aside as contrary to law due to the present disclosure of the pendency of MC No.100 (M) of 2006 on the file of Principal Family Court, Patna?

13. The 1st respondent had passed an Order on 13.9.2012 in Order No.19/2012, which is produced as Annexure R-9. In the said Order, it has been decided as follows :-

"6. NOW THEREFORE, after considering the entire case and in exercise of power vested in me under section 92 (i) of Air Force Act, 1950 read with the Rule 162 of the Air Force Rules, 1969, I hereby order that Rs 8000/- be paid every month from the pay and allowances of 621688 JWO Binod Sharma from the month of Oct 2012 payable on last working day of each month for the maintenance of his wife, Smt Gayatri Devi for a period of five years or till re-union, or divorce or grant of maintenance allowance to her by the Court or material change in circumstances and facts or discharge of the JWO from service whichever is earlier.

7. The entire amount of Rs 8000/- is to be remitted every month by the Air Officer Commanding, Air Force Central Accounts Office, New Delhi-110010 at the expense of 621688

JWO Binod Sharma MTD of MTTI, AF in the bank Account of Smt Gayatri Devi or at her residential address – D/O Late Parmeshwar Sharma, Vill-Natthupur, P.O - Lai, Dist – Patna, Bihar.”

14. The said Order was passed by the 1st respondent under Section-92(i) of Air Force Act, 1950, read with Rule-162 of Air Force Rules, 1969. No doubt, the Competent officer empowered to deduct penal deductions from the pay and allowances of an officer could do the same towards the payment of maintenance allowance to his dependents. The said power should have been exercised certainly within the provisions of AFO 24/2000 dated 6.10.2000. The reliance was placed by the Learned Counsel for the applicant in Para-18 of the said AFO 24/2000. It reads thus :-

"18. In case the spouse of a person subject to AFA is granted a maintenance allowance by Civil Court, no further maintenance allowance will be granted under section 91/92 of AF Act, 1950. The quantum of maintenance allowance granted on the basis of an order by Civil Court will neither exceed the decree amount nor the amount as per sub para 16 (a) above."

15. According to the said Rule, when the Civil Court has granted maintenance allowance, the competent officer cannot make penal deductions under Section-92 (i) of Air Force Act more than that of the decree amount. The Court of Inquiry had, however, passed an Order of payment of maintenance allowance in favour of the 6th respondent from the pay and allowances of the applicant as described earlier.

16. We have already found that neither the applicant nor the 6th respondent had disclosed about the existence of an Order of competent Civil Court towards the grant of maintenance amount or the pendency of proceedings before the Family Court for enhancement of maintenance amount. Therefore, there is no reason to blame the Court of Inquiry that it violated the provisions of Para-18 of AFO 24/2000. Even in the evidence of the applicant before Court of Inquiry, he had spoken to the effect that he stopped the payment of maintenance allowance payable to the 6th respondent on the basis of an agreement reached in between them before the Court, since the 6th respondent came to live together with him and in the cohabitation they also got three children. In the said circumstances, the Court of Inquiry can only rely upon the materials placed before it and ascertain the facts and circumstances of the case to reach any conclusion on the facts and circumstances proved before it. The applicant did not choose to speak about the pendency of the maintenance case in MC

No.100(M)/2006 for enhancement of maintenance amount. If really the said proceedings were placed before the Court of Inquiry, different considerations would come into play. All these relevant materials were not placed before the Court of Inquiry and they were suppressed by the applicant before the Court of Inquiry.

17. Now he has come forward with the allegations regarding the pendency of maintenance case in MC No.100 (M)/2006 before the Principal Judge, Family Court, Patna, and is seeking to set aside the Order passed by the Court of Inquiry. His case before us is quite contrary to the factual aspects he raised before Court of Inquiry in respect of his second marriage with Munni Kumari and the children born to him. Now he had come forward to admit that the children were born to his second wife and not through the first wife Gayatri Sharma, the 6th respondent herein. The documents produced by the respondents 1 to 5 show that the applicant had produced his photo with Munni Kumari in colour and his photo with Gayatri Sharma in black and white and represented the respondents that both the women were one and the same, namely Gayatri Sharma. The said case of the applicant was found to be a lie when those two photographs were sent to Forensic Laboratory, Mylapore, Chennai, for finding the truth in which the report would disclose that the women in both the photographs are different and not the same person. All these circumstances would go to show that the

applicant had suppressed the facts not only before the Court of Inquiry, but also pleaded facts before us contrary to the stand taken before the Court of Inquiry. The proceedings before the Court of Inquiry is challenged by the applicant before this Tribunal. The present proceedings before us is nothing but continuance of the Court of Inquiry proceedings. The applicant is putting forth the pleas which are contrary to the nature of please taken in those proceedings which would falsify the earlier stand as well as the present stand taken by the applicant. The case of the applicant before the Court of Inquiry as well as in this Tribunal are mutually destructive apart from their contradictory nature. In the said circumstances, the relief sought for by the applicant to set aside the Order passed by the Court of Inquiry cannot be granted to the applicant since he has not come to the Court with clean hands. The Court of Inquiry is fully justified to pass an Order of maintenance in favour of the 6th respondent since it was confined to the facts pleaded before it and it cannot travel outside the scope of such materials. The applicant has schemingly pleaded Para-18 of AFO 24/2000 before us without disclosing the maintenance case proceedings in MC No.100(M)/2006 before the Court of Inquiry. The conduct and action of the applicant is not only condemnable, but no discretion can be exercised in his favour as he is guilty of suppression of facts.

18. The Hon'ble Apex Court in a Judgement in Arunima Baruah v. Union of India, reported in 2007 (6) SCC 120, held that :-

"It is trite law that to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of a material fact. This Court, of course, held that what is a material fact, suppression whereof would disentitle the suitor to obtain a discretionary relief, would depend upon the facts and circumstances of each case. However, by way of guidance this Court held that a material fact would mean that fact which is material for the purpose of determination of the lis."

19. Following the aforesaid principle laid down by the Hon'ble Apex Court, we are of the considered view that the applicant is not entitled to the relief sought for in setting aside the Orders passed by the 1st respondent directing the payment of maintenance allowance to the 6th respondent and the communication Order issued by the 5th respondent. Both the points are accordingly decided against the applicant.

20. **Point No.3:** In the foregoing discussions, we have come to the conclusion that the Orders passed by the 1st respondent and the 5th respondent are not liable to be set aside in favour of the applicant. However,

the maintenance case proceedings in MC No.100(M)/2006 on the file of Principal Judge, Family Court, Patna, is pending for enhancement of the maintenance allowance. In the said circumstances, the respondents 1 to 5 had come to the conclusion that the applicant is liable to pay a sum of Rs.8000/- from and out of the pay and allowances to the 6th respondent towards her maintenance. No doubt, the decisions taken by the competent Civil Court would be binding upon the applicant as well as the respondents. While the Orders passed by the respondents 1 and 5 are not liable to be set aside as against the applicant, the said payment of maintenance allowance shall be continued till it is varied by a competent Court (i.e.) Principal Family court, Patna, in the maintenance case proceedings in MC No.100 (M)/2006. If the maintenance amount likely to be fixed by the said Court is exceeding the quantum of Rs.8000/- as ordered by the respondents 1 to 5, the 6th respondent would be entitled to the difference of the said amount. If, for any reason, the quantum of maintenance is fixed less than Rs.8000/-, then the amount already received by the 6th respondent shall be adjusted with the future maintenance allowance payable as per the Order of the said Court.

21. It is also brought to the notice of the Tribunal that as per Para-4 of AFO 24/2000, the accusation of plural marriage against the applicant was separated and the proceedings are under process. It is also stated in Para-9

of the Reply Statement that administrative action is being taken against the applicant for the plural marriage done by the applicant. Such proceeding shall be proceeded and expeditiously be disposed.

22. With the aforesaid observations and directions, the application is dismissed as devoid of merits. However, there is no order as to costs.

Sd/-
JUSTICE V.PERIYA KARUPPIAH
MEMBER (J)

Sd/-
LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (A)

12.6.2013
(True Copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

NCS

To,

1. The Chief of Air Staff,
Union of India,
Air Headquarters (Vayu Bhavan)
Rafi Marg,
New Delhi-110 106.
2. Air Officer Commanding
Air Force Record Office
Subrata Park
New Delhi-110010.
3. Air Officer Commanding
Air Force Central Accounts Office
Subrata Park
New Delhi-110010.
4. Air Officer Commanding
Training Command, Air Force.
Bangalore-560006.
5. The Commanding Officer
MTTI, Air Force, AF Station, Avadi
Chennai-600055.
6. Smt. Gayatri Devi
D/o-Late Parmeshwar Sharma
Vill- Natthupur, PO- Lai, District- Patna
Bihar- 801103
7. Mr. M. Chidambaram, R. Meena,
AQ Choudhury, R. Pavithra
Counsel for applicant
8. Mr. B. Shanthakumar, SPC
Counsel for respondents 1 to 5
9. OIC, Legal Cell,
Air Force, Avadi,
Chennai.
10. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

O.A.No.98 of 2012

12.6.2013