**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.11876-11877 OF 2018
(D.No.41636 OF 2015)

SQN. LDR. (RETD.) NAVTEJ SINGH ……Appellant

VERSUS

UNION OF INDIA AND ORS. ..…. Respondents

**JUDGMENT**

**Uday Umesh Lalit, J.**

1. Delay condoned.

2. These appeals under Section 30 read with Section 31(2) of the Armed Forces Tribunal Act, 2007 ("The Act", for short) are directed against (i) judgment and order dated 24.02.2015 in O.A. No.420/2013 and (ii)

judgment and order dated 03.07.2015 in Review Application No.19/2015 in O.A. No.420/2013; passed by the Tribunal[1].

3. In aforesaid O.A. No.420/2013, the appellant had challenged the order invalidating him from service on medical grounds and had prayed for directions that he be promoted to the post of Wing Commander and that the names of his family members (wife and daughter) be recorded in the service record and allow all benefits due to them. However, while issuing notice on 08.01.2016 the matter was limited by this Court to the question whether "marriage of the petitioner with Meenu Sangha can be recognized for purposes of grant of post-retirement benefits, medical facilities and family pension etc." Accordingly leave to appeal is granted under Section 31(2) of the Act in respect of the issue in question.

4. The appellant after completing training from Air Force Academy, Hyderabad, was granted commission in the rank of Pilot Officer in the branch of Flying Navigation of Indian Air Force with effect from

[1]Armed Forces Tribunal, Principal Bench, New Delhi.

16.12.1995. Thereafter, he received promotions in due course of time and was finally promoted to the rank of Squadron Leader.

5. Sometime in the year 2001 the appellant was diagnosed of *Dysthemia and Alcohol Dependence Syndrome and Primary Hypothyroidism* and since then was put in low medical category. A Medical Board was constituted to consider his medical condition and on 27.02.2009 the Medical Board found him to be unfit for all flying duties. The appellant was given the option of being transferred to the Administrative Branch but expressed his unwillingness. In the circumstances, Invaliding Medical Board was constituted to consider the case which declared that the appellant be invalidated out of service on medical grounds. The aforesaid recommendation of the Invaliding Medical Board was approved and the appellant was invalidated out of service with effect from 18.11.2009 in the rank of Squadron Leader.

6. While in service, on 27.10.2008 the appellant had applied to the Director, Directorate of IMINT, Air Headquarters (VB), New Delhi, seeking permission to marry. It was stated as under:

> "I may be permitted to marry Ms. Meenu Sangha D/o. Col. Jagjeet Singh (Retd.). My fiancée is holding an Indian passport

> with a Canadian immigrant visa and is working with Toronto Dominion Canadian Trust bank. The bank is not supported/funded by the Canadian government."

According to the appellant, he was orally allowed to proceed with marriage and as such he contracted marriage on 19.12.2008.

7. Air Force Order (AFO 14 of 2000) dated 09.06.2000 as amended from time to time dealt with the subject "Marriage – IAF Personnel" and paragraphs 5 to 9) of this order dealt with "Marriage with Foreign National". For the present purposes, Air Force order (AFO 04 of 2009) dated 20.03.2009 was the relevant policy document when the issue arose for consideration. Paragraphs 2,7,8,9,10,11 and 16(c) of said Air Force Order dated 20.03.2009 are to the following effect:

> "2. Prior permission of the competent authority is mandatory for all air-warriors before contracting marriage as indicated in paras 3 to 9 below. Application to marry can only be submitted if the age on the date of marriage is minimum 21 years (completed) for male and minimum 18 years (completed) for female. The provisions of this AFO would apply for all cases of re-marriage.
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> … … …
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> 7. Provisions regarding marriage with a foreign national are contained in Chapter V of IAP 3904. Marriage with a foreign national is not to be contracted without the prior sanction of the

AOP. However, nationals of Bhutan will be deemed to be Indian nationals for this purpose.

8. An air-warrior intending to marry a foreign national is to submit an application as per proforma given at Appendix 'C'. Application complete in all respects is to be forwarded through proper channel, so as to reach Air HQ (DPS) at least three months before the proposed date of marriage.

9. Application for marriage with a foreign national is to be accompanied in all cases with the following:

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

(b) A separate application (in quadruplicate) seeking premature retirement or release from service on personal grounds.

(c) An undertaking from the air-warrior to the effect that he will pay the training cost, if his or her spouse refuses to acquire Indian citizenship or willfully delays acquisition of Indian citizenship.

(d) A written undertaking from the foreign national to the effect that he/she will renounce his/her original nationality and accept Indian citizenship as and when Indian citizenship Act 1955 permits him or her to do so. This will be on an affidavit on a non-judicial stamp paper.

10. The formats of the PR application and the undertaking to be given by the air-warrior as well as the foreign national are given in Appendix 'C', 'E' & 'F' respectively to this Order.

11. If an air-warrior contracts marriage with a foreign national without obtaining prior permission of the competent authority, he/she would be liable for disciplinary action or administrative

> action for dismissal/removal/compulsory retirement from service, as considered appropriate by the competent authority. Cases with sufficient documentary proof of such violations in respect of officers and warrant ranks are to be forwarded to Air HQ/Deptt of JAG (Air) after vetting by CJA at Comd HQ for initiation of disciplinary administrative action. Command HQ may take necessary action in respect of airmen of the rank of Sgt and below [including NCs (E)].
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> … … …
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> 16(c). Application for marriage with foreign nationals will also be processed as mentioned in sub-para (b) above. As per para 1(i) of COI letter No.20(38)/2001/D(Coord) dated 12th July, 2002, "all requests of the members of the Armed Forces for permission to marry a foreign national will have to be processed within 120 days. If such a request is not finalized within the period of 120 days, the consent will be deemed to have been given." Therefore, such cases are to be given utmost importance and processed expeditiously within the stipulated timeframe."

8. On 22.09.2009 the wife of the appellant had submitted an application to relinquish Canadian Immigrant Status. In November, 2010, the wife of the appellant left her job and joined the appellant in India to look after the appellant. As the appellant could not recover, he moved to Canada for further treatment. While the couple was in Canada, they were blessed with a daughter on 03.10.2011. After his condition recovered, the appellant returned back to India with his wife and daughter. On 12.06.2013, the appellant applied to the Director, Directorate of Air Veteran, Air

Headquarters to include the names of his family members in the Certificate of Service and issuance of ECHS cards. According to the appellant, on 19.06.2013, permission was granted by the Joint Director to issue the Certificate as prayed for but the permission was later withdrawn on instructions of DPO, Air Headquarters on 16.07.2013.

9. In these circumstances, the appellant filed O.A.No.420/2013 submitting that his medical condition was attributable/aggravated by conditions of service and prayed for the relief and directions as stated above.

10. The respondents filed affidavit in opposition submitting *inter alia* as under:

> "7. That the applicant applied for permission for marriage on 27 Oct 2008. AFO 14/2000 and AFO 04/2009 lays down the QRs of marriage with foreign nationals. His fiancée was holding an Indian passport with a Canadian immigration visa and was working with Toronto Dominion Canadian Trust Bank. Since the applicant had not submitted desired mandatory papers along with the application and the fiancée of the applicant was not fulfilling the QRs as laid down by AFO 04/09. The applicant was informed to submit necessary documentary evidence before his said application could be processed.
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> 8. That from the available records and a draft CoS submitted by the applicant, it is clear that on the day of Invalidment i.e. 18 Nov 09, the name of Ms. Meenu Sanga was not mentioned in the

> official records as wife in draft Certificate of Service, signed by him. The name of his wife did not even appear in Certificate of Service (CoS) issued to him at the time of Invalidment.
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> 9. That the applicant had informed the AF authorities on 15 Jan 2009 that he got married with Ms. Meenu Sanga on 19 Dec 2008. As the applicant had not submitted requisite documents in time, his case for ex-post facto sanction for marriage with foreign national was not processed by the concerned directorate."

11. The Tribunal did not accept the case that the medical condition of the appellant was attributable to or was aggravated by conditions of service. It however held that the appellant had 30% disability which was to be rounded off to 50% and consequently was entitled to disability pension @ 50% with interest @ 12% per annum. It however rejected the case that the appellant was entitled to promotion as claimed. It was also held that since the marriage was contracted by the appellant without any permission, he was not entitled to take benefit of his marriage with the foreign national. The Tribunal thus partly allowed O.A.No.420/2013 by its judgment and order dated 24.02.2015.

12. The appellant thereafter filed Review Application No.19/2015 seeking review on the grounds that the appellant had applied for ex-post facto sanction of marriage on 15.01.2009 which was duly recommended by

Section Commander and Air Officer Commanding. It was further stated that in terms of AFO 14/2000 the respondents had to process the application within 120 days and as there was complete failure on their part, in terms of said AFO there would be deemed consent. This review application was dismissed by the Tribunal vide its order dated 03.07.2015.

13. The aforesaid judgment and orders dated 24.02.2015 and 03.07.2015 are under challenge in this appeal. After issuance of notice the pleadings were exchanged. In the counter affidavit filed on behalf of the respondents following assertions were made:

> "That another application dated 01.10.2009 was subsequently received from the Appellant requesting for ex-post facto sanction for marriage already contracted along with an undertaking from the lady, dated 22.09.2009, in which she has stated that, subsequent to marriage with the Appellant, she would relinquish her Canadian immigration status; meaning thereby, that after marriage in Dec., 2008, the lady had not relinquished her Canadian immigrant status even as on 22.09.2009. … … …"
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> … … …
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> That in the meantime, his case for ex-post facto sanction for marriage was submitted for consideration of the competent authority (AOP), who on 23.11.2009 directed that "the spouse should relinquish her Canadian immigrant status etc. before approval of ex-post facto sanction for marriage". The directions of the AOP were conveyed to HQ EAC on 01.12.2009. HQ EAC vide signal No. PS/471 dated 08.12.2009 informed that the officer had already proceeded on release from the IAF on medical grounds w.e.f. 18.11.2009. In the light of the release of the officer from the IAF already having occurred and the

> Appellant was no longer subject to the Air Force Act, 1950, the matter relating to his application for grant of ex-post facto sanction with Ms. Meenu Sangha, an Indian national holding Canadian immigration visa, did not merit being pursued further."

14. We heard learned counsel for the parties at length who took us through the relevant documents and record.

15. The assertions made in the counter affidavit, as extracted hereinabove, indicate that though the application was made by the appellant for ex-post facto sanction for marriage, it was not considered since, in the meantime, the appellant was released from the Indian Air Force on medical grounds and as such was no longer subject to the Air Force Act, 1950.

16. The facts on record indicate that:

i) The appellant intended to marry Ms. Meenu Sangha daughter of Colonel Jagjeet Singh (Retd.) holding an Indian passport but working with Toronto Dominion Canadian Trust Bank with Canadian immigrant visa.

ii) It is a common ground that in terms of the relevant policy, a serving officer would be required to obtain permission before any marriage with a foreign national could be contracted.

iii) On 27.10.2008 the appellant applied to the Directorate seeking permission to marry.

iv) According to the relevant policy document the marriage could not be contracted without requisite permission to marry and in case no communication was received from the Directorate for 120 days, there would be deemed consent and permission.

v) The appellant without waiting for the express permission or the expiry of 120 days, did contract the marriage on 19.12.2008.

vi) Any violation on part of the officer of the mandate the concerned policy could visit him with the possibility of departmental action including dismissal or removal from service.

17. In the present case neither there was any action taken against the appellant for infraction of the mandatory requirement of the policy nor there was any express communication rejecting his request seeking permission. As a matter of fact, there was no communication at all within 120 days.

18. After having contracted the marriage, the appellant also applied for ex-post facto permission for marriage. However, said application was not considered at all as, in the meantime, the appellant was released from Indian Air Force and ceased to be governed by the provisions of the Indian Air Force Act, as asserted in the counter affidavit.

19. It is in this factual backdrop that the issue in question needs to be considered. The underlying idea behind the policy is that in case a person governed by the provisions of Indian Air Force Act, 1950 intends to contract marriage with a foreign national, requisite intimation in that behalf is required to be made and appropriate permission is also required to be obtained. As a part of the exercise, the foreign national with whom the marriage is to be contracted may be required to give up the original citizenship and acquire citizenship of India. If there be any infraction or violation of the mandate of the requirements, the concerned officer could be visited with penalty including dismissal or removal from service. The policy has well laid and designed procedure including the timelines and the time limit of 120 days within which the authorities are required to apply their mind and consider the application seeking permission. In case nothing is heard within 120 days, the policy incorporates the concept of

deemed consent or permission. All these requirements are in respect of those governed by the Indian Air Force Act, 1950 that is to say the serving officials.

20. In the present case, even if we are to proceed on the footing that the marriage was contracted without the permission and as such there was infraction on part of the appellant, no disciplinary action was initiated or taken against him nor was any express rejection of his request intimated to him at any stage. His initial application was dated 27.10.2008 and he was invalidated out of service with effect from 18.11.2009 on medical grounds and not for any infraction of aforesaid policy. As a matter of fact, the department did not respond for more than 120 days in the matter.

21. In any event of the matter, what is relevant for the present purposes is the fact that the appellant is no longer in service with Indian Air Force and on the respondents' own showing he has ceased to be subject to Indian Air Force Act. During the course of hearing we asked the learned counsel for the respondents as to what advantages and benefits a retired service person including his family would be entitled to. We have been given to understand that the wife may in certain cases be entitled to pension, in the

event of death of the officer and the family including the spouse would be entitled to benefits such as canteen facilities and membership of officers club and such other benefits. We further asked the learned counsel for the respondents that if an officer after his release or retirement wished to contract marriage with a foreign national was there any restriction or prohibition under any of the policy documents in force. The learned counsel could not lay his hands on any such policy or point out any such provision. The stand of the respondents thus is clear that the policy in question is aimed at regulating certain aspects while the officers are in service. If an officer after his release or retirement could, therefore, validly contract the marriage with a foreign national and the spouse would therefore be entitled to all the benefits including medical or hospital facilities or club membership or canteen facilities etc., it does not stand to reason why the appellant, at least after his release from the Indian Air Force, should be disentitled in that behalf.

22. In the facts and circumstances of the case, we therefore direct the respondents to include the names of the wife and daughter of the appellant in the Service Certificate at least from the date of his release or retirement and direct the respondents to extend to the wife and the daughter of the

appellant all such benefits which a spouse and children of a retired officer would be entitled.

23. The appeals stand allowed in aforesaid terms. No costs.

…….....……..……..……J.
(Uday Umesh Lalit)

……...……..…..……J.
(Dr. Dhananjaya Y. Chandrachud)

New Delhi,
December 05, 2018.