

**(SEE RULE 102 (1))****ARMED FORCES TRIBUNAL, KOLKATA BENCH****O.A. No. 103 of 2013****THIS 14<sup>th</sup> DAY of SEPTEMBER 2016****CORAM:****HON'BLE JUSTICE AMAR SARAN, MEMBER (JUDICIAL)****HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

APPLICANT(S)

**Flight Lieutenant Ishan Sharan**  
Flat No 3 A, Shiv Madhuri Enclave  
Anand Gram, Morabadi District,  
Ranchi, Jharkhand-834 008.

Versus

RESPONDENT(S)

1. **Union of India,**  
Through Secretary  
Ministry of Defence  
New Delhi – 110 011
2. **The Chief of Air Staff**  
Air Headquarters,  
New Delhi – 110 011
3. **The Air Officer Commanding**  
32 Wing, Air Force  
c/o 56 APO

For the applicant (s)

Mr. S.K. Choudhury, Advocate  
Major K Ramesh, Advocate  
Ms. Archana Ramesh, Advocate

For the respondent(s)

Mr.S. K. Bhattacharyya, Advocate

**ORDER****PER LT GEN GAUTAM MOORTHY, HON'BLE MEMBER (ADMINISTRATIVE)**

1. This is an application filed under section 14 of the Armed Forces Tribunal Act, 2007 challenging the order of termination of service of the applicant issued vide Govt. of India, Ministry of Defence Letter No. Air

HQ/23407/1655/PS/MoD F. Dy. No. 88/CC/D(Air-III)/2013 dated 28<sup>th</sup> June, 2013 under which the Central Government in exercise of the powers conferred by section 19 of the Air Force Act, 1950 read with Rule 16(7) and (8) of the Air Force Rules, 1969 has ordered that Flt Lt Ishan Sharan (29675-F) F(P) of 31 Sqn AF attached to 48 Wg AF be dismissed from the service. The relevant sections of the Air Force Act and Air Force Rules under which the dismissal was carried out are appended below :

**The Air Force Act 1950**

*“ **Sec 19. Termination of service by Central Government.**- Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service any person subject to this Act.*

**The Air Force Rules 1969**

*“**Rule 16: Dismissal or removal of officers for misconduct.**- (1) An officer may be dismissed or removed from service for misconduct by the Central Government, but before doing so and subject to the provisions of sub-rule (2) he shall be given an opportunity to show cause against such action.*

(2) xxxxxxxxxxxxxx

(3) xxxxxxxxxxxxxx

(4) xxxxxxxxxxxxxx

(5) xxxxxxxxxxxxxx

(6) xxxxxxxxxxxxxx

(7) *The Central Government may, after considering the reports against the officer and his defence, if any, and the recommendations of the Chief of the Air Staff, dismiss or remove the officer from service.*

(8) *In this rule and in rule 17 the Chief of the Air Staff while submitting a case to the Central Government may recommend that instead of removing an officer from service, he may be compulsorily retired or that he should be called upon to resign his commission, and the Central Government in passing orders may instead of removing an officer from service, compulsorily retire him or give the officer an option to submit his resignation, and if he refuses to do so, remove him from the service.”*

2. The case in hand is that one lady Air Force Officer namely Sqn Ldr

Anindita Dasgupta, wife of Sqn Ldr Vishak Nair was found dead (hanging from

ceiling fan) at Air Force Station, Jodhpur in her house on the night of 27-28 November, 2012. A Court of Inquiry (C of I) was convened to inquire into the circumstances under which Sqn Ldr Anindita Dasgupta (29110-S) Adm FC of 33 SU AF was found dead in officer married quarter 875/2 DJ at Air Forced Station Jodhpur. The brief narrative of events as brought out in the Court of Inquiry (page 7) is as follows :-

*“1. On the intervening night of 27-28 Nov 12 at about 0245h Sqn Ldr Anindita Dasgupta (29110-S) Adm/FC of 33 SU, Air Force was found hanging from the ceiling fan of her bedroom in OMQ No 875/2, Diamond Jubilee Officers Enclave, by her husband Sqn Ldr Vishak Nair (28933-A).*

*2. The couple had an argument regarding marital disharmony between them. The couple had retired in separate rooms. At about 0230h when Sqn Ldr Vishak Nair awoke and noticed that lights of the room in which Sqn Ldr A Dasgupta had retired for the night was still on and bolted from inside. Sqn Ldr Vishak Nair went out and when peeped in from the window of Sqn Ldr A Dasgupta’s room, found her hanging from the ceiling fan.*

*3. He called up the Station Duty Officer at around 0245h and informed him the matter. Subsequently the SDO arrived, followed by CO 31 Sqn AF and other authorities. The civil police also arrived and finally Sqn Ldr A Dasgupta was brought down by the civil police at around 0715 on 28 Nov 12 and taken for post mortem.*

*Sd.  
( MR Kane )  
Gp Capt  
Presiding Officer”*

*Date:- 02 Dec 12*

3. The Court of Inquiry was held from 2.12.12 to 21.12.12. Its terms of reference (TOR) (page 3) were as under :

**“TERMS OF REFERENCE**

**COURT OF INQUIRY UNNATURAL DEATH OF**

**Sqn Ldr Anindita Dasgupta (29110-S) Adm FC of 33 SU AF**

- 1. To inquire into the circumstances under which above mentioned air warrior allegedly committed suicide on intervening night of 27/28 Nov 12 and confirm the factum of suicide.*
- 2. The evidence of the Court of Inquiry are to be recorded on oath.*
- 3. To make brief accounts of circumstances surrounding the alleged suicide.*
- 4. To ascertain the following:-*

- (a) *Date, Time and place of alleged suicide.*
  - (b) *The nature of 'Duty' on which the persons were engaged at the time of death.*
  - (c) *Reasons for the alleged suicide. Could the alleged suicide have been avoided?*
  - (d) *Whether any suicidal tendencies/depressed state of individual was noticed by superiors/peers? If so, what steps were taken by such superior/peer to remedy the same.*
  - (e) *Whether the deceased was under psychiatric care?*
  - (f) *Was the death/suicide due to a wrongful act/negligence/ill-treatment on the part of any person ?*
  - (g) *Whether the NOK has submitted any complaint/representation on the alleged suicide to the authorities? If so, to take cognizance of such complaint/representation and inquire into the allegations made therein.*
  - (h) *Any representation made by the individual in writing or otherwise at welfare meetings, etc.*
  - (j) *Counseling records of the individual.*
  - (k) *Medical category of the individual with diagnosis and date of last review.*
  - (l) *Details about alcohol consumption, amount, regularity/duration and change in drinking pattern noticed, if any?*
  - (m) *Whether in LMC for alcohol dependence? If so, the medical category.*
  - (n) *Details about the financial state-take home pay, details of loan taken from service/other sources (from Accts section/family).*
  - (o) *Any change of behavior noticed in past three months.*
  - (p) *Details of sick reports in last six months-causes and disposals.*
  - (q) *If suicide note was left by individual, details about the same.*
5. *To bring on record and deliberate the following documents*
- (a) *Inquest Report of the Civil Police.*
  - (b) *Post mortem Report.*
  - (c) *Death certificate/Cremation Certificate.*
  - (d) *Investigation report by the P&S Unit.*
  - (e) *Leave records of the individual, has she denied any leave.*
  - (f) *Copy of FIR/Investigation by civil police.*
  - (g) *Any disciplinary action taken against the individual in last one year.*

6. To record findings on the attributability or otherwise of the death to the AF service.
7. To inquire into the other issue relevant to the incident/alleged suicide.
8. To apportion blame, if any, person found responsible.
9. To make recommendations including these for preventing recurrence similar incidents in the future.

Date : 01 Dec 12

Sd/-  
(DM Singh)  
Sqn Ldr  
Stn Adjt"

4. The Court of Inquiry examined 18 witnesses and after exhaustive deliberations recorded the following findings and recommendations (pages 378-384) :-

#### **"FINDINGS**

1. Pursuant to the orders of assembling of Court of Inquiry by Air Officer Commanding, 32 Wg vide Station/Unit Order No. 94/12 dated 29 Nov 11 as amended vide SRO SI No 95/12 dated 04 Dec 12. The Court of Inquiry assembled at 32 Wg on 02 Dec 12 at 1200h and studied the Terms of Reference. Total 18 Witnesses were examined on oath.
2. The Court after duly deliberating the entire evidence on record with respect to each issue mandated to be inquired in accordance with the Terms of Reference finds the following:-

#### **(a) Brief Account of Circumstances Surrounding the Unnatural Death of Sqn Ldr Anindita Dasgupta.**

- (i) On 27 Nov 12 Sqn Ldr Anindita attended the farewell party of 33 SU at Officers' Mess. She left the party early after taking permission from Wg Cdr DK Agarwal (**Witness No 5**) stating that she wanted to call her parents from landline. Sqn Ldr Anindita returned home at around 2230h. Sqn Ldr Vishak Nair (**Witness No. 1**) and his wife (Sqn Ldr Anindita Dasgupta) had an argument in the night of 27 Nov 12 over the issue of her alleged extramarital affair with Flt Lt Ishan Sharan. After the argument Sqn Ldr Anindita locked herself in the room. Sqn Ldr Vishak Nair took his dog out for a walk at about 2300h and returned home after 15 minutes. On returning he went to the main bedroom and slept off.

- (ii) *At about 0230h on 28 Nov 12 when he woke up he noticed that light was on in other room. On calling the name of his wife he did not get any response. Thereafter, he went outside and called out her name from the window of the room. On getting no response, he made a hole in the wire mesh of the window and moved the curtain with a steel rod. On doing so he saw his wife hanging from the ceiling fan.*
- (iii) *Thereafter, he informed his Sqn mate Sqn Ldr SP Dora (Witness No. 2), who also was the SDO (Exhibit 'B') for that day, and subsequently the flow of information to various authorities followed. The door of the room was forced open by Wg Cdr H Mishra (Witness No. 3) and Sqn Ldr SP Dora and found the body motionless. The DMO, Wg Cdr Sunaina (Witness No. 7) found Sqn Ldr Anindita Dasgupta dead at about 0340h on 28 Nov 12.*
- (iv) *The police arrived at about 0400 – 1415h on 28 Nov 12, lowered the body, carried out all relevant photography of the incident site and the deceased. The body was thereafter taken to MGH Jodhpur.*
- (v) *As per the Post Mortem Report Sqn Ldr Anindita Dasgupta died 'Ashyxia due to Antemortem Hanging' and the viscera is preserved for chemical and histopathological examination.*
- (vi) ***On the evidence available so far no foul play is suspected in the death of Sqn Ldr Anindita Dasgupta.***
- (vii) *The above analysis is subject to change in case the Viscera Report brings to light any evidence contrary to the evidence available so far.*
- (b) ***The following facts were ascertained :-***
- (i) *Suicide was committed by Sqn Ldr Anindita Dasgupta in the intervening night of 27/28 Nov 12 at OMQ 875/2, DJ Area. Sqn Ldr Anindita was found dead at around 0340h by Wg Cdr Sunaina (Witness No. 7).*
- (ii) *Sqn Ldr Anindita Dasgupta had come back home at about 2230h after attending the farewell party of 33 SU at Officers' Mess on 27 Nov 12 and was not on official duty at the time of her death. (Witness No. 1 & 5).*
- (iii) *Sqn Ldr Anindita Dasgupta had landed herself in a precarious situation wherein she was unable to continue her relationship as a wife with Sqn Ldr*

*Vishak due to her extra marital affair with Flt Lt Ishan Sharan. There was a possibility of loss of face in the event of the matter coming to the notice of her parents, owing to their high opinion about her husband, Sqn Ldr Vishak. Also, Flt Lt Ishan's refusal to marry her put additional psychological stress on her. The emotional turmoil and feeling of helplessness could have led her to take such a drastic step. (Witness No. 1, 16 and Exhibit 'AG').*

- (iv) *There were no suicidal tendencies/state of depression noticed in Sqn Ldr Anindita recently, but she showed signs of a temperamental nature just prior to the marriage of Flt Lt Ishan Sharan, wherein she cut her inner arm at three – four places and sent a photo of the same to Flt Lt Ishan. (Witness No. 1, 5, 6 & 16).*
- (v) *The deceased was not under any psychiatric care (Witness No. 7).*
- (vi) *The suicide was not due to any wrongful act/negligence/ ill treatment on the part of any person. (Deliberations at Page No. 148)*
- (vii) *The NOK has not submitted any complaint/representation on the suicide of Sqn Ldr Anindita to the authorities. (Witness No. 1,9,11,13 and Para 4 of Exhibit 'AG')*
- (viii) *There are no records found wherein she made any representation at welfare meetings or otherwise (Witness No. 9)*
- (ix) *Sqn Ldr Anindita came on posting to Jodhpur in Aug 11. There are no records of written counseling, however, she was counseled verbally by Wg Cdr DK Agarwal. She was orally briefed to prepare herself for the next Category up gradation Board. (Witness No 5)*
- (x) *She was holding the Medical Category A4G1 and last medical was conducted out on 08 Dec 12.(Exhibit 'F')*
- (xi) *No change was noticed in alcohol consumption, amount, regularity/duration and change in drinking pattern.(Witness No. 1,6 and 16)*
- (xii) *She was not in LMC for alcohol dependence. (Witness No. 7)*
- (xiii) *The financial state of Sqn Ldr Anindita was sound. A temporary PF withdrawal was outstanding, of which*

9 instalments of Rs. 6000/- were paid out of 17.  
**(Witness No. 8 and Exhibit 'K')**

(xiv) No significant change in the behavior of Sqn Ldr Anindita was noticed during the past 3 months  
**(Witness No. 1,5 & 6)**

(xv) She reported sick twice, for Abdomen ache on 14 and 15 Nov 12 **(Witness No. 7 and Exhibit 'G')**

(xvi) No suicide note recovered from the incident site.  
**(Witness No. 1, 2, 3, 13 and Exhibit 'AG')**

(c) The following documents have also come on record of Col. The details are given below :

(i) The Inquest report of civil police.**(Exhibit 'W' and 'AG')**

(ii) Post Mortem Report showing the cause of death as **"Asphyxia due to antemortem hanging"**. However, viscera have been preserved for chemical and histopathological examination at FSL. **(Exhibit 'AG')**

(iii) Death certificate issued by Jodhpur Municipal Corporation. **(Exhibit 'V' and "AG")**

(iv) Cremation Certificate. **(Exhibit 'AG')**

(v) Investigation report by No. 8 P & S Unit **(Exhibit 'AG')**

(vi) Leave records of Sqn Ldr Anindita **(Exhibit 'N')**

**(vii)** Copy of FIR and 'Aprakritik' mratyu (Murg) report (Unnatural Death Report) by civil police. **(Exhibit 'W' and 'AG')**

(d) The death of Sqn Ldr Anindita is not attributable to the AF services due to the following reasons :

(i) As per the documentary evidences produced by witness No. 5 and Exhibit C Sqn Ldr Anindita was not on official duty at the time of her death.

(ii) She was found dead at her residence. (Witness No. 1 to 16 and 18)

(iii) There is no causal connection between her death and service duty. **(Deliberations by the Court at page No. 148)**

(e) The issues relevant and leading to the suicide of Sqn Ldr Anindita Dasgupta are brought out below :

- (i) *When the couple was in Bareilly, friendship between Sqn Ldr Anindita and Flt Lt Ishan Sharan grew beyond the acceptable limits of friendship. Once Sqn Ldr Vishak caught them coming from the bathroom one after the other at their CO's party in Bareilly. That time they convinced Sq Ldr Vishak that it was nothing but friendship and it was misunderstanding on Sqn Ldr Vishak's part. Sqn Ldr Vishak accepted and told her to start afresh. He told Flt Lt Ishan Sharan not to maintain any contact with his wife and concentrate on his marriage **(Witness No. 1 and 16)***
- (ii) *The day when Flt Lt Ishan was getting married Sqn Ldr Anindita told him that she was upset on him getting married and wanted him to reconsider his decision of getting married at that time. When he denied, she sent him a photo on WHATSAPP showing her freshly cut forearm at three-four places. **(Witness No. 16)***
- (iii) *Sqn Ldr Vishak and Flt Lt Ishan got posted to Jodhpur and Sqn Ldr Anindita was also posted to Jodhpur on co-location during the period of Jul-Aug 12 **(Witness No. 1 and 16)***
- (iv) *Similar situation, as in Bareilly, had started developing as Sqn Ldr Anindita and Flt Lt Ishan Sharan started interacting very often. Flt Lt Ishan again made an error of judgment, as he again failed to take any step to stop the situation from developing further. **(Exhibit 'AA')***
- (v) *Flt Lt Ishan Sharan would visit Sqn Ldr Anindita at her residence in Sqn Ldr Vishan's absence and had also stayed overnight when Sqn Ldr Vishak was on T/D to Goa from 03 to 07 Nov 12 **(Witness No. 14)***
- (vi) *The couple had a fight over the issue of FB chat log **(Exhibit 'AC')** that Sqn Ldr Vishak had seen when Sqn Ldr Anindita inadvertently left her chat log open on 25 Nov 12.*
- (vii) *The FB chat log indicates that there were no inhibitions between Sqn Ldr Anindita and Flt Lt Ishan. In the past also she had written an email to Flt Lt Ishan indicating the same **(Exhibit U)***
- (viii) *Sqn Ldr Vishak thereon wanted a separation from his wife and had told Sqn Ldr Anindita to inform her parents about the same. **(Witness No. 1)***
- (ix) *SqnLdr Anindita was in dilemma as she did not want to inform her parents about the decision to separate. Also*

*Sqn Ldr Vishak was adamant on his decision to separate.  
(Witness No.1)*

- (x) *Sqn Ldr Vishak was insisting that she should inform her parents about the decision to separate, had informed his brother and also emailed the same to Sqn Ldr Anindita's elder sister (Witness No. 1)*
- (xi) *Possibility of marrying Flt Lt Ishan Sharan being non-existent. She was in a state of emotional turmoil and feeling of isolation.*
- (xii) *All the above put immense psychological pressure on her, forcing her to take the extreme step of taking her own life to escape isolation and helplessness in the situation she had put herself into.*

### **Blameworthiness**

3. *The Court after considering the entire evidence on record including the documentary evidence and deductions drawn by the court, found Flt Lt Ishan Sharan blameworthy on four counts on which Para 790 (a) of Regulations for the Air Force 1964 was applied against him on 13 Dec 12. After duly applying the provisions of Para 790(e) of Regulations for the Air Force 1964, finds Flt Lt Ishan Sharan blameworthy on following counts (Refer analysis of evidence in respect of the counts against Flt Lt Ishan Sharan discussed in Para 32 to 62 of the deliberations by the Court, from page No. 152 to 163):-*

- (a) *Knowing fully well that Sqn Ldr Anindita Dasgupta is married to Sqn Ldr Vishak Nair, had adulterous relationship with her.*
- (b) *Failing to exercise caution and restraint by staying with Sqn Ldr Anindita Dasgupta in her house No. 875/02, DJ Area, AFS Jodhpur in the absence of her husband Sqn Ldr Vishak Nair during 03 Nov 12-07 Nov 12.*
- (c) *Behaving in a manner unbecoming of an officer by maintaining extra marital/physical relationship with Sqn Ldr Anindita Dasgupta, being himself married.*
- (d) *Behaving in a manner unbecoming of an officer by luring SqnLdr Anindita Dasgupta wife of Sqn Ldr Vishak Nair into a relationship hereby stealing her love and affection.*

<i>Sd.</i>	<i>Sd.</i>	<i>Sd.</i>	<i>Sd.</i>
<i>(H. Bhatnagar)</i>	<i>(MK Sharma)</i>	<i>(K Sharada)</i>	<i>( MR Kane)</i>
<i>Flt Lt</i>	<i>Sqn Ldr</i>	<i>Sqn Ldr</i>	<i>Gp Capt</i>
<i>Member</i>	<i>Member</i>	<i>Member</i>	<i>Presiding Officer</i>
<i>20 Dec 12</i>	<i>20 Dec 12</i>	<i>20 Dec 12</i>	<i>20 Dec 12</i>

**RECOMMENDATIONS BY THE COURT**

1. *The Court is of the opinion that cases of this nature are happening in the society at various levels. In this regard therefore, the IAF is also not untouched. Modern technology affording quick, easy and mobile communication capable of running social applications affording 24x7 connectivity is a major contributor to such cases. Technology such as these cannot be denied and therefore the repercussions also cannot be avoided.*

2. *The induction of female officers in the IAF has led to their working in close quarters with the male officers. Also with both interacting with each other for major part of the day the likelihood of developing attraction is high. However, this does not give a reason to enter into an unacceptable relationship.*

3. *The Court Recommends the following :-*

*(a) Disciplinary/administrative action may be initiated against Flt Lt Ishan Sharan (29675-F) F(P) of 31 Sqn for the counts on which he has been found blameworthy by the court.*

*(b) All Air Warriors may be sensitized on their behavior/interaction with the opposite gender at regular intervals.*

*(c) Air Warriors may be encouraged to inform the superior authorities any social issues, most likely to be first detected by the peer group, at the first instance.*

*(d) Air Warriors may be sensitized about the adverse effects of social media applications available on modern day communication devices.*

<i>Sd.</i>	<i>Sd.</i>	<i>Sd.</i>	<i>Sd.</i>
<i>(H. Bhatnagar)</i>	<i>(MK Sharma)</i>	<i>(K Sharada)</i>	<i>( MR Kane)</i>
<i>Flt Lt</i>	<i>Sqn Ldr</i>	<i>Sqn Ldr</i>	<i>Gp Capt</i>
<i>Member</i>	<i>Member</i>	<i>Member</i>	<i>Presiding Officer</i>
<i>21 Dec 12</i>	<i>21 Dec 12</i>	<i>21 Dec 12</i>	<i>21 Dec 12</i>

5. In his remarks, the AOC 32 Wing, AF concurred with the findings of the COI and recommended administrative action against Flt Lt Ishan Sharan. The AOC-in –C SWAC too concurred with those remarks and recommended Administrative action for dismissal/removal from service under section 19 of the Air Force Act as set out below:

**COURT OF INQUIRY UNNATURAL DEATH OF**  
**SQN LDR ANINDITA DASGUPTA (29100-S) ADM FC OF 33 SU AF**

**Remarks by Commanding Officer**

N/A

Date

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**Remarks by Air Officer Commanding**

*I concur with the findings and recommendations of the Court of Inquiry. Administrative action is recommended to be initiated against Flt Lt Ishan Sharan (29675-F) F(P) of 31 Sqn for the counts on which he has been found blameworthy by the court. Forwarded for necessary action, please.*

Date: 21 Dec 12

Sd.  
(S Saju)  
Air Cmde  
AOC  
32 Wing, AF

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**Remarks by Command Headquarters**

1. I Concur.
2. Death of Sqn Ldr A Dasgupta is not attributable to service.
3. Administrative action against Flt Lt Ishan Sharan for dismissal/removal under section 19 of AF Act is recommended.

Sd.  
(AK Gogoi)  
Air Mshl  
AOC-in-C

Date 02 Jan 13

SWAC, IAF"

6. Based on the above, the officer was issued with a show-cause notice as to why he should not be dismissed from service under section 19 of the Air Force Act, 1950 read with Rules 16 of Air Force Rules, 1969 for misconduct. The show-cause notice dated 18.01.2013 is set out as hereunder:

"Tele 011-2301023/5185

Air Headquarters  
Vayu Bhawan  
New Delhi-110106

Air HQ/C 23407/1655/PS

18 Jan 13

Flt Lt Ishan Sharan (P)

31 Sqn AF attached to 48 Wg AF

**SHOW CAUSE NOTICE**

1. **WHEREAS**, you were commissioned in the Indian Air Force on 16 Dec 2007 in the Flying (Pilot) Branch and presently, you are held on the posted strength of 31 Sqn AF. Before that, you were on the posted strength of 24 Sqn at Bareilly from 10 Sep 08 to 03 JUL 12.
2. **AND WHEREAS**, Sqn Ldr Vishak Nair (28893) F(P) of 31 Sqn AF and his wife Sqn Ldr Anindita Dasgupta (29110) Adm/FC of 33 SU, AF were also posted at AF Stn Bareilly during the period you were at Bareilly.
3. **AND WHEREAS**, in Jul 2012, Sqn Ldr Vishak Nair was posted out from AF Stn Bareilly to Air Force Station Jodhpur along with his wife Anindita Dasgupta. You also got posted out from AF Stn Bareilly to the unit of Sqn Ldr Vishak Nair and you joined at Jodhpur along with your wife Mrs Tamanna in Jul 12.
4. **AND WHEREAS**, Sqn Ldr Anindita Dasgupta was found hanging from the ceiling fan of her room in the intervening night of 27/28 Nov 12 at the Service Quarter No OMQ No. 875/2 DJ at AF Stn Jodhpur.
5. **AND WHEREAS**, a Court of Inquiry ( C of I) was held at AF Stn Jodhpur on 2 Dec 12 and subsequent days to investigate the circumstances under which Sqn Ldr Anindita Dasgupta (29110-S) Adm/FC of 33 SU AF was found dead at the said Service quarter.
6. **AND WHEREAS**, 18 witnesses were examined before the C of I, which apportioned blame to you on the following counts :-
  - (a) Knowing fully well that Sqn Ldr Anindita Dasgupta is married to Sqn Ldr Vishak Nair, had adulterous relationship with her.
  - (b) Failing to exercise caution and restraint by staying with Sqn Ldr Anindita Dasgupta in her house No. 875/02, DJ Area, AFS Jodhpur in absence of her husband Sqn Ldr Vishak Nair during 03 Nov 12 – 07 Nov 12.
  - (c) Behaving in a manner unbecoming of an officer by maintaining extra marital/physical relationship with Sqn Ldr Anindita Dasgupta, being himself married.
  - (d) Behaving in a manner unbecoming of an officer by luring Sqn Ldr Anindita Dasgupta wife of Sqn Ldr Vishak Nair into a relationship thereby stealing affection of the wife of brother officer.

7. **AND WHEREAS**, the evidence on record in the C of I proceedings *inter-alia* reveals in clear terms that you shared an amorous relationship with Sqn Ldr Dasgupta; used to be with her at her quarter during the absence of her husband; were involved in telephonic conversation of exceptionally long durations with her; and exchanged e-mails with her showing intense intimate relationship between two of you. You have made a statement on 14 Dec 12 wherein, you admitted the relationship between you and Sqn Ldr Anindita Dasgupta was improper. You further stated that at AF Stn Bareilly, the relationship between you and Sqn Ldr Anindita Dasgupta reached a point wherein she confessed her feelings towards you and you also reciprocated the same and did not take any action to stop such development. After sometime, when she expressed her desire to leave Sqn Ldr Vishak and marry you, you decided to back off. At Jodhpur also, you felt that the situation akin to the one at Bareilly was developing and there was an error of judgment again on your part as you failed to take any step to stop it.

8. **AND WHEREAS**, in its deliberations the C of I has observed that the commission of suicide by Sqn Ldr Dasgupta as a sequel to arguments between Sqn Ldr Vishak Nair and Sqn Ldr Dasgupta on the issue of your illicit relationship with her.

9. **AND WHEREAS**, after having considered the C of I proceedings, Chief of the Air Staff is satisfied that the counts of blameworthiness stated at para 6 *ibid*, have been fully substantiated by the evidence on record. The CAS is also satisfied that various acts of misconduct on your part, as established in the C of I proceedings, are contrary to the letter and spirit of Air HQ policy on the issue of 'Indecent and Scandalous Behavior'. Air Warrior's issued vide Air HQ/25402/3/Lgl dated 04 Feb 10.

10. **AND WHEREAS**, the CAS is of the view that issues established in the C of I proceedings, involve and have a bearing on personal relationships between different individuals and need not be brought out in public domain. The CAS is therefore satisfied that in the facts and circumstances of the instant case, your trial by a Court Martial is inexpedient, but in view of gravity of the misconduct established against you, your further retention in the Service is undesirable.

11. **AND WHEREAS**, the CAS has directed that the instant Show Cause Notice be issued to you in terms of Rule 16(4) of the Air Force Rules, 1969.

12. **NOW THEREFORE**, you are to show cause as to why you should not be 'dismissed' from the Service under Section 19 of the Air Force Act, 1950 read with Rule 16 of the Air Force Rules, 1969 for your above stated misconduct. Your reply, if any, to this Show Cause Notice giving all business you wish to urge in your defence against the proposed action, is to be submitted to your Commanding Officer within 14 days of receipt of this Show Cause Notice by you, failing which it shall be assumed that you have nothing to urge in your defence and further action as deemed appropriate against you shall be taken accordingly.

13. A copy of the above said proceedings of the C of I held at AF Stn Jodhpur is annexed.

14. *The receipt of this Show Cause Notice be acknowledged.*

*Sd.  
(SV Kute)  
Gp Capt  
Jt JAG (Air)  
For CAS"*

*Annexure: Proceedings of C of I*

7. On 05.02.2013 the applicant replied to the show-cause notice in which he has taken his defence as under:

*"48 Wg, AF  
C/O 56 APO*

*05 Feb 13*

*The Chief of Air Staff  
Air Headquarters  
Vayu Bhawan  
New Delhi – 110006.*

*REPLY TO SHOW CAUSE NOTICE*

1. *Apropos the Show Cause Notice dated 18 Jan 2013 issued by Gp Capt SV Kute, Jt JAG (Air) regarding the proposed action to dismiss me from the Indian Air Force as envisaged in terms of Section 19 of the Air Force Act, 1950 read with Rules 16 of Air Force Rules, 1969 for my alleged misconduct of:*

- (a) Knowing fully well that Sqn Ldr Anindita Dasgupta is married to Sqn Ldr Vishak Nair, had adulterous relationship with her.*
- (b) Failing to exercise caution and restraint by staying with Sqn Ldr Anindita Dasgupta in her house No. 875/02, DJ Area, AFS Jodhpur in absence of her husband Sqn Ldr Vishak Nair during 03 Nov 12 – 07 Nov 12.*
- (c) Behaving in a manner unbecoming of an officer by maintaining extra marital/physical relationship Sqn Ldr Dasgupta being himself married.*
- (d) Behaving in a manner unbecoming of an officer by luring Sqn Ldr Anindita Dasgupta wife of Sqn Ldr Vishak Nair into a relationship thereby stealing affection of the wife of brother officer.*

2. *As a sequel of the aforesaid directions I am submitting my reply to the Show Cause Notice on points of facts, for your kind consideration, please.*

3. In the instant case a Court of Inquiry was convened by the written order of Air Officer Commanding Air Force Station, Jodhpur to inquire into the circumstances under which the lady officer Sqn Ldr Anindita Dasgupta (19110-S) Adm/FC of 33 SU, AF was found dead in OMQ No. 875/2 DJ at AF Stn Jodhpur on 27/28 Nov 2012. The Scope of the Court of Inquiry is given in the Terms of Reference. The main focus of the Court of Inquiry was to circumscribe by way of inquiring into the circumstances under which the lady officer Sqn Ldr Anindita Dasgupta was found dead on 27/28 Nov 2012.

4. The Court of Inquiry was to broadly outline whether it was case of Murder or a Culpable Homicide not amounting to murder or in case it was a case of committed suicide then whether the reasons which compelled the lady officer to take such a drastic step was related and attributable to military service/service conditions in the Air Force. Alternatively, if the suicide was committed due to any personal reasons than to pinpoint the strong nexus between that 'cause' and 'death'. It would be agreed that that there should be a strong nexus so as to apportion the blame to anybody rather than a remote nexus as these days for refusal of leave or not getting choice postings or not empanelled for promotion also military personnel have taken their own life. Inter alia much beyond its limited and circumscribed scope the Court of Inquiry has blamed me for Adultery with the Lady Officer in the First Charge as also Extra Marital relationship in the Third charge meaning the same and only duplicating it.

5. In this particular case it is a matter of serious concern that right from 0230 hrs when Sqn Ldr Vishak Nair first saw his wife hanging no Air warrior made even an effort to get the hanging body down. There is a remote possibility of her having lost her consciousness also and the correct action would have been to get the body down and at least make an effort to retrieve her before pronouncing her dead. No officer and even Medical Officer brought the hanging body down till 0440 hrs implying that the medical declaration of death was also done when she was still in a hanging position. Only when the Civil Police came with a Lady Constable was the lady officer brought down, which is most unfortunate.

6. Further, assuming but not admitting that I am guilty of committing the misconduct as alleged in the SCN, it was a mere error of judgment and not any wrongful intention on my part. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3<sup>rd</sup> Edn. at p 3026, the term misconduct has been defined as under:

"The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.... Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed, 'Misconduct' literally means wrong conduct or improper conduct".

7. I have categorically stated in my statement dated 14 Dec 12 that my feelings in Aug-Oct 2011 towards Sqn Ldr Dasgupta was a mere error of judgment on my part and as soon as I realized the same, I have not harbored any feeling or maintained any relationship with Sqn Ldr Anindita Dasgupta

other than friendship and that too with the concurrence of my wife Mrs. Tamma Sharan and Sqn Ldr Vishak Nair, husband of Sqn Ldr Anindita Dasgupta. In fact, it was the suggestion of Sqn Ldr Vishak Nair that we should interact socially. Also, it is said that women have a sixth sense which senses such feelings in their husbands towards other women but my wife was quite comfortable with our friendship.

8. If it is hypothetically correct that I had an adulterous relationship with her then the lady should have been very happy on the prospect of separating from her husband. Then she would not have felt abandoned and there would not have been any reason for her to take such a course of action. Also, not a single Air Force officer out of the 18 witnesses in the Court of Inquiry with whom I was closely associated in official and private capacity have noticed anything wrong with our friendship. Even the husband of the lady i.e. Sqn Ldr Vishak Nair (Witness No. 1) has not made any allegations of adultery against me nor has he stated in no unmistakable terms that he had had seen both of us in compromising situation and position. In fact, it is even the case in the SCN that when Sqn Ldr Anindita Dasgupta expressed her desire to marry me, I decided against it. The said action on my part goes a long way to establish the integrity of my character and also the fact that I never intended to 'steal the affection of the wife of a brother officer' and create any disharmony in their marital life. Therefore, on the basis of the fact of my case and the evidence on record, any error of judgment on my part must be excluded from the expression 'misconduct' and I should not be awarded with most grave and extreme punishment of 'dismissal from service'. Sqn Ldr Vishak Nair getting angry seeing the Face Book Chat Log is quite natural but the chat was also of Aug 2011 period and the date of suicide is 27/28 ov 2012. The e-mail that the lady had sent to me in Mar 2012 had been discovered by Sqn Ldr Vishak Nair and he was aware of her feelings towards me at that stage. Undoubtedly the cause of death has rightly brought out by APM in his report is that the lady officer was unable to manage sustenance of her marriage where her husband had made it clear that night that a Civil Suit for Divorce (Mutual/Disputed) is on the cards very shortly. Even when she came back from the party that night there was no sign on her husband accepting her. This action of her husband may be absolutely right in his line of thinking being his personal matter but the guilt she was having of facing her parents/sister in this embarrassing situation of divorce could have triggered her to take this impromptu impulsive decision in haste to end her life by hanging herself, to this unfortunate tragic death.

9. The most important ingredient of this offence of Adultery in terms of Section 497 of IPC is that the accused must have had a sexual intercourse with the woman. In my case, there is admittedly no sexual intercourse with the deceased Sqn Ldr Anindita Dasgupta and as such the most essential ingredient for commission of the offence of adultery is not present in my case. Here, Sqn Ldr Vishak Nair getting offended on 27 Nov 2012 by the contents of Face Book Chat log of Aug 2011 which was inadvertently discovered by him was justifiable but that does not mean that an adulterous relationship is going on. If he had a prima facie opinion of a possible adulterous relationship he should have corroborated the same by confronting me, but his interaction with me remained friendly throughout. Thus, only on the basis of bare allegations and assumptions, presumptions and hypothesis of Mrs. Anju (witness No. 14) and her so called experience in such matters, it cannot be said that I was guilty of

*having an adulterous relationship with the deceased. If she had seen me sleeping in the bed with my leg over the leg of Sqn Ldr Anindita Dasgupta then the bedroom door could have been open for her to enter. However, in her statement earlier she had mentioned herself that whenever I would enter the bedroom, the door would remain latched from inside. If it was true, she would have told the officer and other maids and in an Air Force Station this news would have spread like wild fire. In another instance, in her initial statement she claimed that I had stayed at Sqn Ldr Anindita's residence for 24 hours, however, when confronted during cross examination she admitted to not having seen me for 24 hours.*

10. *It may be pertinent to point out the inconsistencies in Mrs. Anju's statements with the facts on ground, such as:-*

*(a) She has stated that Sqn Ldr Vishak Nair and Anindita had complete faith in her. However, Sqn Ldr Anindita had mentioned in front of the Sqn ladies at CO's residence on the occasion of Wg Cdr Ashish Kumar's farewell that she was not happy with the attitude of her maid servant and was looking for a change.*

*(b) She has stated that she used to cook non veg on weekends during our get togethers and also removed the sofas and the centre table for us. But Sqn Ldr Anindita used to cook non veg always on her own since she did not prefer her maid servant's cooking, and sofas etc. used to be pushed out by us and we never asked the maid servant to do so, which has been contradicted by her itself when she has stated later on that everybody used to push the sofas aside while dancing.*

*(c) She has stated that I did not visit their house even once when Sqn Ldr Anindita's parents had been visiting. The truth is that I along with my wife had visited them twice at her residence and also had gone for a movie with them in the company of Sqn Lde V Banka and his wife.*

*(d) She has stated that on Sqn Ldr Vishak Nair's birthday party on 21 Nov 12, she saw me seated next to Sqn Ldr Anindita and my hand was on her thighs. I would like to state that my wife was also present in the party along with at least four to five more officers and anyone would have to be out of his mind to do such a thing in front of his wife or in public.*

11. *And the statement of this witness has been made the sole basis for indicting me for above mentioned charges.*

12. *Importantly it is sheer common sense and prudence that any person engaged in this type of adulterous relationship would do so totally clandestinely and here as the maid-servant states that the bedroom and even the servant quarter entrance door is left open for her eyes. It is sheer absurdity that the summary of the statement of maid- servant and her deposition has*

*directly resulted in the Show Cause Notice for termination of the services of a promising Fighter Pilot, apart from being conferred the prestigious Chief of Air Staff Sword of Honour, on whom the Nation has spent crores of rupees. It may be worth mentioning that I bagged all the trophies in the Air Force stream and first in academics at NDA and all the awards at the Air Force Academy as well.*

13. *Further, by reason of Section 198 (1) & (2) of the CrP.C. 1973, a complaint of adultery can be made only by the 'person aggrieved' by the offence i.e. by the husband of the women. In my case, there has never been any grievance of Sqn Ldr Vishak Nair that I was having an adulterous relationship with his wife nor did he make any complaint to the said effect with the higher authorities or even raise the issue with me.*

14. *Here the husband bases his possibility prima facie not on physically catching his wife in a compromising situation or photographs or any documentary/oral evidence. The Aug 2011 Face Book Chat Log does not discuss about any nefarious physical activities of adulterous relationship at all. It is just a long chat. There are thousands of boys and girls or men/women who chat for 2-3 hours across the globe when they have not even met in person let alone physical relationship. It could be termed as having a fad or a liking at best and here I have been mature enough to convince her to show her loyalty towards her own husband by maintain the institution of marriage and me mine. If she had a strong liking for me does not mean that I had reciprocated.*

15. *That the second count of misconduct alleged against me is that I failed to exercise caution and restraint by staying with Sqn Ldr Anindita Dasgupta in her house No. 875/02 DJ Area, AFS Jodhpur in absence of her husband Sqn Ldr Vishak Nair during 03 Nov 12 – 07 Nov 12. Again, the said allegation is based on the assumption, presumptions and hypothesis of Mrs. Anju (witness No.14) and as a result of the resentment she must have harbored towards me. Mrs Anju has taken money from me on a couple of occasions on various pretexts. I had one given her Rs. 500/- as she had stated that her son was injured and she wanted money for his treatment. On another occasion she had taken money from the pretext of feeding Sqn Ldr Anindita Dasgupta's dog while the couple was on leave. I reported the same to Sqn Ldr Dasgupta in whose house Mrs. Anju was working as a domestic help. Mrs. Anju was rebuked badly by Sqn Ldr Anindita Dasgupta for putting her in an embarrassing situation by asking money from her friends. I may have come and gone for some work occasionally, and during that period I had gone to lend her my car as her vehicle was unserviceable. A few minutes or an hour does not mean staying for 24 hours from 03 to 07 Nov 2012. The Court of Inquiry, instead of taking into account the statement of the neighbours as well, has taken her statement as the Gospel truth and come to this conclusion. Mrs. Anju has also been proved to be false in her accusation that Sqn Ldr Vishak Nair saw me in the bed room of Sqn Ldr Anindita Dasgupta a few days prior to the incident which had started the fight between them, however, Sqn Ldr Vishak Nair has himself denied to me the correctness of this statement.*

16. *As for the 4<sup>th</sup> charge whether I lured her or not, can be inferred by her e-mail to me not to proceed for marriage in March 2012 and that I should marry*

*her after her divorce. To that my response was in the negative and my advice to her was to ensure that her marriage worked well. I only tried to live upto my duties of friendship with her and my long conversations with her prior to the incident were only to pacify the distraught lady and advise her to continue with her marriage. Also the fact that she was an Air Force officer, senior to me in service and in age refutes this charge against me. Sqn Ldr Anindita Dasgupta was known for her extremely out going and friendly nature. There can be genuine friendships with the opposite sex. Every relationship should not be seen through a sexual prism. My wife Mrs. Tamanna Sharan was fully aware of my friendship with Sqn Ldr Anindita Dasgupta and had no objection or reservation towards the same as was the case with Sqn Ldr Vishak Nair.*

*17. I came through RIMC, NDA and into IAF. It was by sheer dedication, hard work and focus, that I performed exceedingly well at the initial stage of training and finally passed out with the prestigious Chief of Air Staff Sword of Honour and all the other trophies for the term including the President's Plaque. It certainly points to my total dedication for the Air Force per se. The only mistake of mine is that I should have ended my interaction with her abruptly. But I chose to stand by her in her times of distress which at that time I felt was the right thing to do.*

*18. In view of the aforesaid cogent reasons I am absolutely not culpable for any of the charges that are made out to be. I pray for a kind and gracious consideration by the respected Chief of Air Staff, to meet the ends of equity, justice and fair play.*

*Sd/-  
(Ishan Sharan)  
Flt Lt "*

8. His reply to the show-cause notice was then considered by the Govt. of India (Ministry of Defence) which then vide their Order No. Air HQ/23407/1655/PS/MoD F. Dy. No. 88/CC/D(Air-III))/2013 dated 28<sup>th</sup> June, 2013 in exercise of the powers conferred by section 19 of the Air Force Act, 1950 read with Rules 16(7) of the Air Force Rules, 1969 ordered that the applicant be dismissed from service. Primarily, the order (extracts below in italics) while refuting the contentions raised by the applicant in his reply to the show-cause notice relied heavily on the Air HQ policy published vide Air HQ letter No. 25420/3/Lgl dated 4<sup>th</sup> February, 2010 on 'stealing the affection of the wife of a brother officer', amongst other examples of misconduct, which

stipulates that if such a relationship is established by means of a C of I/Formal Investigation or other report, no leniency is to be shown to the blamed individual and prompt action is to be initiated for terminating the services of such personnel under the relevant rules. The order stated that from ***“the evidence on record of the proceedings establishes that Flt Lt Ishan Sharan has entered into an inappropriate, illicit and amorous relationship with Sqn Ldr Anindita Dasgupta, wife of Sqn Ldr Vishak Nair and thereby he has committed misconduct of stealing the affection of the wife of a brother officer.”*** The dismissal order also pointed out that ***“it may be possible that the relationship was mutual and complimentary, implying that the lady is also an active and willing partner. In such cases, the onus is upon the air-warrior to withdraw and desist from having such relationship. The consensual nature of the relationship does not absolve the individual from the consequences of his wrongful act or reduce the gravity of his misconduct.”*** Hence, it concluded that ***“the counts of blameworthiness against Flt Lt Ishan Sharan were fully supported by the evidence on record of the C of I proceedings. The C of I has been conducted strictly as per the procedure and he was offered full opportunity to vindicate his stand. The principles of natural justice have been fully complied with in his case and no prejudice has been caused to him.”*** It concluded that, ***“misconduct of Flt Lt Ishan Sharan is so grave and serious in nature that his further retention in Service is undesirable”*** and accordingly ordered his dismissal him from Service.

9. The learned counsel for the applicant commenced his arguments with the statement that the first witness in the C of I was the husband of the deceased, Sqn Ldr Vishak Nair, who raised a serious allegation against the applicant having a highly inappropriate relationship with his wife Sqn Ldr

Anindita Dasgupta. The counsel contended that no sooner had this been alleged, the C of I should have invoked para 790 of the Regulations for the Air Force 1964 (Reprinted Edition 2003), (hereinafter referred to as 'the Regulations') so that the applicant Flt Lt Ishan Sharan could have been available throughout the C of I in order to hear the deposition of the witnesses and have the liberty to cross-examine them but instead on the same day the applicant was sent away on temporary duty. Para 790 of the Regulations (relevant extracts) is reproduced as under :-

*"790. Action when Character, etc, of Persons is affected.*

*(a) As soon as it appears to the court that the character or professional reputation of an officer or an airman is affected by the evidence recorded, or that he is to blame, the affected person is to be so informed by the court. All the evidence recorded up to that stage is to be read over to the affected person, and the court is to explain to the person, if so required by him, how, in its opinion, it appears that the officer's or airman's character or professional reputation is adversely affected, or how he appears to be to blame.*

*(b) From the time an officer or airman is so informed, in accordance with sub-para (a) above he has the right to be present during all the ensuing proceedings, except when the court is deliberating privately. The fact that an officer or airman to whom this para applies is or is not present will be recorded in the proceedings.*

*(c) The affected officer or airman may, if he so desires, cross-examine any witness whose evidence was recorded prior to the action taken under sub-para (a) above. He may, likewise, cross-examine subsequent witnesses after their statements have been recorded. He may also request the court to record the evidence of any witness in his defence. The officer or airman may make any statement in his defence.*

*(d) In case the officer or airman affected cannot, for any reason be present to exercise his privilege under sub-paras (a), (b) and (c) above, the court is to inform him by letter (or otherwise as may be convenient) of the reasons why, in the opinion of the court, his character or professional reputation appears to be affected, or he appears to be to blame. The affected person may make a statement in writing in denial, exculpation, or explanation. The statement is to be attached to the proceedings, and the court is to endeavour, by examining or recalling witnesses, to accord, to the affected person, such protection as is intended in sub-paras (a), (b) and (c) above.*

(e) *If, after recording, all the evidence, and after taking such action under sub-paras (a) to (d) above as may be called for in the circumstances, the court is of the opinion that an officer or airman is to blame, or that his character or professional reputation, is affected, the entire proceedings are to be shown to the affected person, and he is to be asked whether he desires any further statement to make. Any such statement is to be recorded, and fresh points are to be fully investigated by the court.*

(f) *The findings, and recommendations, if called for, of the court may then be made in accordance with the terms of reference.*

(g) *An officer or airman to whom sub-para (a), (b), (c) or (d) applies does not have the right to demand that the evidence be taken on oath or affirmation, or, except so far as the assembling authority or the court may permit, to be represented by a solicitor or other agent.*

(h) xxxx

(j) xxxx

(k) xxxx

10. Thereafter, 15 witnesses were examined in the absence of the applicant and the applicant was summoned as the 16<sup>th</sup> witness.

11. The learned counsel for the applicant relied on many judgments commencing with a judgment of the Armed Forces Tribunal, Principal Bench, on 01.05.2013 in the case of Col Kamal Deep Singh vs. Union of India & Others in OA 93 of 2012, in which the Tribunal held as follows :

*“21. ----- But after going through the finding of the Court of Inquiry we find that the conduct of the Court of Inquiry is totally in violation of Rule 180 of the Army Rules. **The Army Rules 180 is very sacrosanct and it gives the full opportunity to the incumbent against whom it is invoked when military reputation and character is involved. In this case we find that rule was invoked against the petitioner. That means Rule 180 was invoked right from the beginning and in that 14 witnesses were examined in presence of the petitioner but subsequently remaining witnesses i.e. upto 48 witnesses were examined when petitioner was asked to go out and the deposition of the remaining witnesses were taken and copies of statement was given to him for cross-examining those witnesses by calling them again. It is true that petitioner was give opportunity to cross examine these witnesses, but this conduct of Court of Inquiry of asking the person against whom Rule 180 has been invoked to go out and examine large number of witnesses in his absence is something unheard of. The Rule 180 clearly mandates that the incumbent should be given full opportunity to participate and to remain present throughout. It is a very salutary rule and peculiar of Army Act. The Court of Inquiry of recording the statement of witness in absence of the***

***accused when he was present by asking him to go out and thereafter taking the examination-in-chief and then giving copies thereof to the accused to cross-examine witnesses is not in true spirit of Rule 180. It may be because of the presence of accused being CO, witnesses might be intimidated in his presence and may not come forward to tell the truth but this is no ground to deny the petitioner a fair opportunity. It was quite possible for the respondent to have suggested the transfer of the petitioner from the Command that could have avoided the embarrassing situation for the witnesses of any other methods could have been employed to see that the witness are not terrorized by the presence of the officer. But it is not permissible to ask the delinquent against whom the Rule 180 has been invoked to go out and record the examination-in-chief in his absence. This is not true spirit of invoking Rule 180 and we cannot subscribe to this. The participation throughout inquiry is a must. Therefore, this illegality in conducting of Court of Inquiry goes to the root of the matter and this renders the entire Court of Inquiry vitiated.***

***22. -----But in the present case, the Court of Inquiry was totally against the true spirit of AR 180 and that cannot be sustained. Therefore we hold that the Court of Inquiry was bad in the law.” (Emphasis added)***

12. The learned counsel for the applicant the stated that this judgment should be applied ***mutatis mutandis*** to this instant case. He also relied on another case, that of Lt Col RD Sharma vs. Union of India & others decided by the AFT, Regional Bench, Chennai on 12.09.2013 in OA 52 of 2013, where it set aside the attachment order of a C of I due to violation of Rule 180. In this decision the Tribunal held as follows :

***“The import of this Army Rule is that whenever character or military reputation of a person is involved, he must be given full opportunity to be present throughout the inquiry to make any statement and give any evidence or to cross- examine any witnesses whose evidence in his opinion affects his character or military reputation. Presence of the person throughout the inquiry is the basic feature of the Army Rule 180. In the absence of compliance of this Rule the Court of Inquiry stands vitiated since the delinquent was not permitted to participate when the examination of witnesses was in progress. Army Rule 180 is a salutary rule and peculiar to Army Act. The requirements of Rule 180 are mandatory as held by the Hon’ble Apex Court and Delhi High Court in a number of cases. The reason for making Rule 180 as mandatory is that it incorporates the principles of natural justice which alone can ensure fair trial to a person whose character or military reputation is in danger. In the case of Lt Col Prithi Pal Singh Bedi v. Union of India reported in (1982) 3 SCC 140, at page 176, the Hon’ble Apex Court held,***

***“Rule 180 cannot be construed to mean that whenever or wherever in any inquiry in respect of any person subject to the Act his character or military reputation is likely to be affected setting up of a Court of enquiry is sine qua non. Rule 180 merely makes it obligatory that whenever a Court of enquiry is***

*set up and in the course of enquiry by the Court of Inquiry character or military reputation of a person is likely to be affected then such a person must be given full opportunity to participate in the proceedings of Court of enquiry. Court of Inquiry by its very nature is likely to examine certain issues generally concerning a situation or persons. Where collective fine is desired to be imposed, a Court of enquiry may generally examine the shortfall to ascertain how many persons are responsible. In the course of such an enquiry there may be a distinct possibility of character or military reputation of a person subject to the Act likely to be affected. His participation cannot be avoided on the specious plea that no specific enquiry was directed against the person whose character or military reputation is involved. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the Court of Inquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation."*

*In the case of Lt **Gen S.K. Sahni vs. COAS, in W.P. (C) No. 11839/2006, Delhi High Court held,***

*"19. While spelling out in unambiguous terms, the different protections available to a person under Rule 180, a Division Bench of this court in the case of Col A.K. Bansal v. UOI and others, CWP 1990/88, decided on 18.1.1991 while quashing the proceedings of the court of inquiry and their findings and the penalty of severe displeasure imposed upon the petitioner in that case, held as under:-*

*"The rule incorporates salutary principles of natural justice for a fair trial and full right of being heard, to a person whose character or military reputation is likely to be affected in a court of enquiry. Four rights are expressly recognized –(1) The officer has a right to be present throughout the enquiry meaning thereby that the entire evidence is to be recorded in his presence; (2) of making statement in defence (3) cross-examination of the witnesses whose evidence is likely to affect his character or military reputation. It is the judgment of the person whose reputation is in danger to testify as to whether an evidence of a particular witnesses is likely to affect his character or military reputation, and (4) such a person has a right to produce evidence in defence of his character or military reputation. It is the mandatory duty of the presiding officer not only to make all these opportunities available to the person whose character and military reputation is at stake but so that person is fully made to understand all the various rights mentioned in that said rule."*

*In the case **Col Kamal Deep Singh vs. UOI and others, in O.A. No. 93 of 2012, the Principal Bench, Armed Forces Tribunal, New Delhi, held,***

*"Therefore, we are of the opinion, so far as the conduct of this Court of Inquiry cannot be sustained because of the breach of principle of natural justice under rule 180 of the Army Rules."*

*In the case of **Major Harbhajan Singh vs. The Ministry of Defence and ors. decided by Delhi High Court in C.W. 204 of 1975, it was held,***

*"15. I, therefore, hold that the findings of guilt against the petitioner recorded by Court of Inquiry are vitiated by the facts that the relevant*

witnesses were not procured by the Court for ascertaining the existence of relevant facts and by denying the opportunity of citing defence witnesses to the petitioner. The evidence of other witnesses for prosecution was found sufficient by the Court of Inquiry for holding that the prosecution case was proved but the legal infirmity is that the defence evidence was not allowed and assessment was one sided.”

The Delhi High Court in the case of Major General RK Loomba in **W.P.(C) No. 3831/2007** page 28 has held:

“The Delhi High Court in the case of General Officer Commander-in-Chief v. R.P. Shukla 10 SCC 294, at page 295, has held,

“5. The High Court vide its judgment dated 4.1.1996 allowed the writ petition on the sole ground of non-observance of Army Rule 180 and accordingly set aside the entire proceedings of the Summary Court Martial including charge-sheet dated 9.4.1992 and also set aside the punishment awarded to the respondents therein with a further direction that they will be entitled to be reinstated in the services. Being aggrieved by the above judgment, the appellant has preferred the present appeal in this Court.”

In *Chopra vs. UOI and Ors.*, AIR 1982 SC page 1413, it has been held, **“The rule is eminently in public interest, there is one other reason why the requirements of Rule 180 are to be strictly interpreted, the normal protection of fundamental rights of the provisions of Article 311, available to the civil servants under the Union or a State are not available to military personnel. The army personnel must maintain high degree of efficiency and preparedness at all the times and the same cannot be maintained effectively unless every member of the armed forces is able to see fair play in action.”**

**In the backdrop of the above judgments, it is well-established that Army Rule 180 is sacrosanct and non-compliance with Army Rules 180 would render a Court of Inquiry vitiated and the proceedings would be liable to be set aside.” (Emphasis added)**

13. The learned counsel for the applicant then also highlighted from the relevant extract of C of I that there is no iota of proof that an adulterous relationship existed between the applicant and the deceased lady officer as is made out to be. Importantly, Sqn Ldr Vishak Nair, the husband of the deceased lady officer had never made any complaint against the applicant especially so regarding adultery as by law he is the only person who can lodge a complaint against any person for an adulterous relationship with his wife. Even in his statement to the Civil Police at Jodhpur Sqn Ldr Vishak Nair had never pointed

out a finger against the applicant. The counsel stressed that the only shred of evidence regarding the intimacy between the two was a 'Facebook Chat Log' of August 2011 (over a year old) between the applicant and the deceased lady officer which triggered a lot of animosity between Sqn Ldr Vishak Nair and his wife so much so that he threatened her for initiation of divorce proceedings. The learned counsel emphasized that the exact reason as can be made out for committing suicide was the trauma and embarrassment of the expected divorce which the deceased lady officer may have felt. He argued that this alone does not in any way lead to the only conclusion of the alleged adulterous relationship of the applicant with the deceased lady. He reiterated that so far as a charge of adultery is concerned, the complaint can be filed by the husband of the lady against whom adultery is made out in terms of Section 198(1) and (2) of the Code of Criminal Procedure, 1973. He argued that it was apparent that the lady officer committed suicide only because of her husband was threatening her with divorce, which might have led to her embarrassment in front of parents and relatives. He also highlighted that the C of I hinged mainly on the deposition of the maid servant who stated that the applicant used to come to the house even when the husband Sqn Ldr Vishak Ldr was away on temporary duty. This statement of the said maid servant was not corroborated by the neighbours.

14. The counsel also highlighted out some other contradictions and discrepancies in the proceedings of C of I and lastly argued that in the impugned termination order para (k) on page 10 it is stated that *'in a C of I nature of proof revolves around probability and not the conclusive proof which is required in a disciplinary action'*. The counsel also brought out that when the applicant was earlier in Bareilly the applicant informed the lady of his

impending marriage and when she told him that she would divorce her husband and get married to the applicant, he (applicant) tried to put good sense into her. Despite this, she cut her forearm in three-four places and sent him a photo on 'Whatsapp', which indicated her infatuation with the applicant. Even the Facebook Chat Log pointed out to this one-sided infatuation. Hence, in order to avoid the shelter of a Court Martial where acquittal could cause more embarrassment to the Air Force, they took recourse to an administrative termination order. Based on the above, the counsel for the applicant has sought relief by arguing that this Tribunal may be pleased to quash and set aside the impugned MoD order of 28<sup>th</sup> June, 2003 and reinstate the applicant back in military service with all back wages, seniority, etc. He also highlighted the excellent track record of the applicant wherein the applicant stood first in a number of subjects right from his training at the National Defence Academy to the Air Force Academy where he won 7 awards including the coveted Sword of Honour and later at the Elementary Flying School where he was adjudged the best overall fighter pilot.

15. The respondents in their Affidavit-in-Opposition have relied heavily on the Court of Inquiry and have highlighted that the main reason for the suicide of Sqn Ldr Anindita Dasgupta could be traced to the highly inappropriate friendship beyond normal limits that she had with the applicant as observed by her husband. The respondents also relied on the four important issues that have been brought out in the C of I (supra) and in the contention of the applicant.

- a) In December 2011, the deceased told the applicant that she wanted to leave her husband and wanted to marry him. On which

the applicant told her that it was not possible as he was due to get married in March, 2012.

b) In February, 2012, Sqn Ldr Vishak Nair happened to read his wife's e-mail meant for the applicant and found the contents of the e-mail highly inappropriate and when her husband called both of them to explain their behavior, she had explained that they were just friends and nothing beyond. Sqn Ldr Nair decided to give them a chance and move on with life. He also told his deceased wife to limit her interaction with the applicant.

c) On 24th November 2012 night when the husband of the deceased was on ORP duty, he noticed that many calls were made on 23rd November 2012 night from the ORP AFNET Phone 35207322 to his wife's mobile No.8560050022 and to her AFNET phone of 33 SU, where his wife was on night duty on that night. These revealed that five calls, one of which was 3661 seconds duration (approximately 1 hour) were made from the said phone. It further revealed that on the night of 23rd November 2012 the applicant was on ORP duty and the said calls to the wife of Sqn Ldr Nair were made by the applicant. Also it was revealed that the applicant had received incoming calls from the deceased wife's AFNET No. on the same night and they had spoken for about 6213 seconds (approximately 1 hour 40 minutes duration). When Sqn Ldr Nair confronted his wife with these calls she had nothing to state.

d) Further, on 25th November, 2012, the deceased's husband had a chance to visit the face book chat history of his wife with the applicant, which had occurred in August 2011, in which his wife had

amongst other wishes had also stated that she wanted to get pregnant with the applicant's baby, before being posted out.

e) All these factors led to him get angry with his wife and he asked for separation.

16. The respondents stated that it was also revealed that on 27th November, 2012 (the fateful night) the applicant also met with the deceased wife after she left the party and before she reached her home. On that night when she returned from a party she told her husband that she had changed her mind and did not want separation. An argument ensued between them after which the couple retired to separate rooms and as brought out, she committed suicide on that very night.

17. The respondents thus drew the conclusion that evidently the applicant's relationship with the deceased was the immediate cause of arguments between the husband and his deceased wife prior to the suicide.

18. Relying strongly on the C of I (supra), the respondents have apportioned blame to the applicant on the following grounds :-

*“(I) Knowing fully well that Sqn Ldr Anindita Dasgupta was married to Sqn Ldr Vishak Nair, had adulterous relationship with her.*

*(II) Failing to exercise caution and restraint by staying with Sqn Ldr Anindita Dasgupta in her house NO.875/02, DJ Area, AFS Jodhpur in absence of her husband Sqn Ldr Vishak Nair during the period of 03 November 2012 to 07 November 2012.*

*(III) Behaving in a manner unbecoming of an officer by maintaining extra marital/physical relationship with Sqn Ldr Anindita Dasgupta being himself married.*

*(IV) Behaving in a manner unbecoming of an officer by luring Sqn Ldr Anindita Dasgupta, wife of Sqn Ldr Vishak Nair into a relationship thereby stealing affection of the wife of brother officer”.*

19. The Respondents further brought out that the C of I recommended Disciplinary/Administrative action against the applicant. The proceedings of the C of I were examined by the competent authority wherein it was revealed that the C of I was conducted as per the procedure and the applicant was afforded all opportunities to defend his case. The evidence on record of the proceedings fully supported the counts on which blame was apportioned to the applicant, Flt Lt Ishan Sharan. The evidence on record of the proceedings established that the applicant had entered into an inappropriate, adulterous and illicit relationship with Sqn Ldr Anindita Dasgupta, the wife of Sqn Ldr Vishak Nair and thereby he had committed the misconduct of stealing affection of the wife of a brother officer. Air HQ policy published vide Air HQ/25420/3/Lgl dated 04 February 2010 on “stealing affection of the wife of brother officer” stipulates that if such a relationship is established by means of a C of I/Formal Investigation or other report, no leniency is to be shown to the blamed individual and prompt action is to be initiated for terminating the services of such personnel under the relevant rules.

20. The respondents have also stated that the whole of the proceedings of C of I were conducted in the applicant’s presence from the stage Para 790 (a), (b) and (c) of the Regulations (supra) were applied against the applicant. They have further stated that as per the terms of reference, when the inquiry commenced, *it was not known to the C of I that the character or professional reputation of the applicant was likely to be blamed and there was no evidence with the C of I to arrive at any such conclusion.* However, as the C of I

progressed and after it having examined and recorded evidence of fifteen witnesses it came to the conclusion that from the evidence recorded up to that stage, *“the character or professional reputation of Flt Lt Ishan Sharan is likely to be blamed.”* Accordingly, he was called before the C of I and the provisions of this para, ie para 790 of the Regulations were duly applied against him. The whole of the evidence on record up to that stage was read over to him, he was allowed to make statements/additional statements in his defence and had the opportunity to cross-examine material witnesses at length. The respondents stated that the principles of natural justice have apparently been duly complied with during the C of I and no prejudice has been caused to the applicant.

21. Further, it was argued that the proceedings of the C of I were duly considered by the competent authority, i.e. the Chief of Air Staff (CAS). The CAS was of the opinion that the misconduct (stealing affection of the wife of brother officer) of which the applicant was found blameworthy by the C of I were so grave in nature that his further retention in service was considered undesirable. Accordingly, a show cause notice dated 18<sup>th</sup> January 2013 was served upon the applicant under Rule 16 of Air Force Rules, 1969 and after considering his reply dated 5<sup>th</sup> February 2013 thereto, the CAS recommended his case to the Central Government for dismissal under Section 19 of the Air Force Act, 1950 read with Rule 16 of Air Force Rules, 1969. The Central Government having duly considered the case in its entirety, dismissed the applicant from service vide Speaking Order dated 28<sup>th</sup> June, 2013 (supra).

22. The respondents further emphasized that the order of the Central Government is legal as per the policy and commensurable to the misconduct of the applicant wherein he was blamed by the C of I based on the evidence

for stealing affection of the wife of brother officer and that no prejudice has been caused to the applicant. They have also quoted the Air HQ Policy Letter published vide Air HQ/25420/3/Lgl dated 04 February 2010 extracts of which are reproduced as under:-

“Tele: 011-23010231/7128  
Tele fax: 011-23012144  
e-mail: [jagair@aoa.iaf.in](mailto:jagair@aoa.iaf.in)

Dept of JAG (Air)  
Air HQ (VB)  
Rafi Marg,  
New Delhi-110106

Air HQ/25420/3/Lgl

04 Feb 10

HQ WAC IAF }  
HQ SWAC IAF }  
HQ CAC IAF }  
HQ EAC IAF } (For SOA/SAAASO)  
HQ SAC IAF }  
HQ TC IAF }  
HQ MC IAF }  
HQ ANC } (AFCC)

### **DISCIPLINE : AIR WARRIORS**

#### **INDECENT & SCANDALOUS BEHAVIOUR**

1. *Para 564 of the Regulations for the Air Force, 1964 inter- alia stipulates that every person in the Air Force is, at all times, to exert his influence against all that tends to encourage vice and immorality. Every AF personnel is supposed to conduct himself impeccably. His actions and deeds have to be aboveboard. If a particular act or omission dishonours and disgraces the air warrior's character and seriously compromises his standing as a member of the combatant force, the Service possesses the right to take appropriate action against him. It is a settled preposition of law that if an employee conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it amounts to misconduct. That misconduct need not be a misconduct in the carrying on of the Service or the business. It is sufficient if it is conduct that is prejudicial or is likely to be prejudicial to the discipline, high traditions or to the reputation of the Service.*
2. *In the backdrop of the above, it is proposed to lay down sound guidelines on the following issues :-*
  - (a) *Homosexual conduct.*
  - (b) *Stealing affection of the wife of brother officer/airman/NC(E).*
  - (c) *Sexual harassment at a work place.*

(d) *Improper acts in relation to ladies away from the work place.*

3. **Homosexual Conduct.** xxxxxxxxxxxx
4. xxxx
5. xxxx
6. xxxx
7. xxxx
8. **Stealing Affection of the Wife of Brother Officer/Airman/NC(E).** *In the close-knit social environment of the Air Force, it is absolutely imperative that AF personnel respect the family lives of their colleagues. The concept of 'Community-Living' in the campuses of AF Stations and Units has a special significance in the lives of AF personnel. The officers/airmen/ NCs(E) proceed on temporary duties, at times of considerably long duration, leaving their families behind inside the AF campuses. While away on temporary duty, there is an implied confidence that their families are in the safe environment and will suffer no harm. Therefore, if an air warrior establishes improper liaison/illicit relationship with the wife of another air warrior, the concept of 'community-living' in the IAF will be severely compromised.*
9. *In such cases, it may be possible that the relationship between an Air Force personnel and the wife of another AF personnel may be mutual and complimentary, implying that the lady is also an active and willing partner to such a relationship. In such cases, the onus is upon the Air Force personnel to withdraw and desist from having such relationship. The consensual nature of the relationship does not absolve the concerned Air Force personnel from the consequences of his wrongful act or reduce the gravity of such misconduct, in any manner. The emphasis is upon the unbecoming nature of such an act.*
10. *After such a relationship is established by means of a C of I/Formal Investigation or other report (s), no leniency is to be shown to the blamed individual and prompt action is to be initiated for terminating the services of such personnel under the relevant rules. In the case of officers and warrant officers, the proceeding are to be forwarded to this HQ along with the recommendations of the Controlling Command HQ, for appropriate action.*
11. **Sexual harassment at a work place.** xxxx
12. **Improper Acts in Relation to Ladies Away From the Work Place.** xxxx
13. xxxxx
14. *This supersedes the earlier policy of this HQ issued vide Air HQ/C 23407/173/PS dated 16 May 72. The contents of this letter be disseminated to all Stations/Units of your Command HQ, for due compliance.*
15. *Please acknowledge.*

Sd.

(PC Grover)  
Air Cmde  
JAG(Air)

**Copy to**

SO to CAS    BCO/VCOAS    BCO/DCAS    BCO/DG(I&S)    BCO/AOM  
 BCO/AOA    BCO/AOP    Stn/Units under Air HQ”

23. In so far the applicant not being present during the first few dates of the C of I, the counsel has stated that the applicant was sent on temporary duty, not to avoid his presence in the C of I but with a view to avoid any untoward situation from taking place involving the applicant and Sqn Ldr Vishak Nair after the death of his wife Sqn Ldr Anindita Dasgupta because it was known to the environment that the applicant had a relationship with the wife of Sqn Ldr Vishak Nair which the latter did not approve and there were rumours that the death might have some connection with the said relationship.

24. Further, it was not known to the C of I at the commencement of the proceedings that *“the character or professional reputation of the applicant was likely to be blamed”* and to commence with, there was no evidence with the C of I to arrive at any such conclusion. But as the C of I progressed and having examined and recorded evidence of fifteen witnesses it came to the conclusion that character of professional reputation of the applicant was likely to blame based on the evidence recorded till that stage. Accordingly, he was called before the C of I and Para 790 (a), (b) and (c) of the Regulations were duly applied against him.

25. They have further submitted that the ratio of the judgment quoted by the applicant’s counsel of the Principal Bench of Armed Forces Tribunal, New Delhi dated 01-05-2013 in the case of Col Kamal Deep Singh vs UOI and Ors does not apply in the present case as the facts and circumstances of the two

cases are different. So also the ratio of the judgment in the case of Lt Col R.D. Sharma vs UOI & Ors.

26. The respondents have also relied on the confessional statement dated 14<sup>th</sup> December, 2012 (Exhibit 'AA'), which was made by the applicant before an independent officer and brought out in the C of I wherein the relationship of the applicant with the deceased was revealed. The confessional statement made voluntarily in presence of an independent officer is reproduced as under:

*“STATEMENT OF INDIVIDUAL MAKING CONFESSION*

*I, Flt Lt. Ishan Sharan (29675-F) F(P) hereby make the following confession voluntarily without the threat, inducement or promise.*

*I, Flt Lt. Ishan Sharan (29675-F) F(P) hereby state that my relationship with Sqn Ldr Anindita das gupta was as good friends till Aug 11. At this stage the relationship reached a point whereas Annee have confessed to me her feelings towards me and I also reciprocated to the same and didn't take any action to stop such development. After sometime I realized that whatever had happened was not correct and when Annee have expressed her desire to back off and told the same to her as well. After that whenever she tried to talk about this I refused to talk about it. Thereafter, after a gap of one month she sent me a mail, two days before I was proceeding on leave for marriage. This mail was not seen by me however, Vishak saw this mail and asked Annee to not to stay in touch with me. However, he didn't speak to me on this issue.*

*When I came back from leave after getting married, Vishak spoke to me and told me that he has forgiven Annee and that I should also forget about all this and start refresh. Before this, during my leave I had informed my wife about the entire situation. Thereafter I went for my BASCO and immediately after returning proceeded on posting to Jodhpur.*

*At Jodhpur, initially, self, my wife and Vishak were here. And our interaction was as friends. Annee have joined after a month. And thereafter our interaction was as couple generally on weekends only.*

*At Jodhpur also, I could feel that the similar situation was developing as was the case in Bareilly. However, there was an Error of Judgement on my part again as I fail to take any step to stop it. I always thought that this was just a phase which would pass by and didn't inform any senior officer regarding the same. That is all Sir.*

*Sd/- I. Sharan*

*Flt Lt*

*14 Dec 12*

*1515 hrs”*

27. The respondents have also relied on the statement of Mrs Anju, Witness No.14, who had stated that on many occasions she had seen the applicant in the house of the deceased both while her husband was present and also in the absence of the husband. She particularly emphasized that the applicant spent a lot of time with the deceased especially when the husband, i.e. Sqn Ldr Vishak Nair was absent. She once saw them sleeping together in the bedroom on a Sunday morning in the first week of November 2012 in each other's arms. She also stated that she also used to co-relate the presence of the applicant Flt Lt Ishan Sharan after hearing his voice from the bedroom window.

28. The other issue that has been highlighted by the respondents is that the contention of the applicant that Sqn Ldr Nair, the husband of the deceased never made any complaint or grievance in this regard is not tenable since it is clear from the record that although he did not file a formal complaint, i.e. when he came to know of their relationship through the e-mail (Exhibit 'U'), he found it to be highly inappropriate and told his deceased wife to stop interacting with Flt Lt Ishan Sharan. Thereafter he had called both of them and with a view to give them a chance told them to forget about the past relationship and to start afresh. Moreover, the respondents have stated that the main cause of arguments between deceased wife and her husband on the night of her death was her relationship with the applicant Flt Lt Ishan Sharan. The evidence on record clearly establishes that he had entered into an inappropriate, illicit and amorous relationship with the deceased thereby he had committed misconduct of stealing the affection of the wife of a brother officer.

29. The respondents have relied heavily on an answer to Question No.162 that the Court of Inquiry made to Sqn Ldr Vishak Nair, which is reproduced as under :

*“Q.162. Did you suspect any physical relationship between Flt Lt Ishan and Sqn Ldr A Dasgupta?”*

*Ans : Initially not, but after going through their Facebook Chat History on 25 Nov 12 it became apparent that they must have been in physical relationship with each other”.*

30. Hence, the respondents concluded that the relationship between the deceased and the applicant was an adulterous relationship and that since this illicit relationship continued unabated, Sqn Ldr Nair got angry with his wife Sqn Ldr A. Dasgupta as he told her that he wanted separation from her. She initially agreed and started living separately in the same house. On 27 November 2012 after returning from the party she told her husband that she had changed her mind and did not want a separation, after which an argument ensued between them and later on that night, Sqn Ldr A. Dasgupta committed suicide.

31. We have gone through the pleadings of both the parties, perused the records of the Court of Inquiry in detail, as also the show-cause notice, its reply and the detailed final order dismissing the applicant from service.

32. At the outset, it must be stated that this is a most unfortunate and a dreadful incident wherein not only the applicant, Flt Lt Ishan Sharan and the husband of the deceased, Sqn Ldr Vishak Nair have been deeply affected and scarred for life but also their families and close friends as well as the family and close friends of the deceased. We shall now attempt to analyze the whole issue in part as well as holistically in order to arrive at a just and fair conclusion. From the records of C of I and the pleadings on record the following is apparent:-

(a) The deceased Mrs. Anindita Dasgupta and her husband Sqn Ldr Vishak Nair fell in love and got married in the year 2008. In the year 2009 while they

were both posted in Bareilly, they developed friendship with Flt Lt Ishan Sharan, the applicant, who was then a bachelor and in service, junior to them. However, the relationship between the deceased Sqn Ldr Anindita Dasgupta and the applicant transcended the norms of friendship to the extent that she, the deceased, expressed deep love to the applicant which has also been borne by the e-mail that she had sent him, which is on record, as well as the printout of 45 pages of a Facebook Chat Log between the two. Her husband Sqn Ldr Vishak Nair while not suspecting a physical relationship certainly came to know about the infatuation of his wife for the applicant and advised her to terminate the relationship.

(b) The applicant during the period in Bareilly also decided to get married to another lady with whom he was in love and married her (Ms Tamanna Singh) on 11<sup>th</sup> March, 2012. However earlier, in December, 2011, according to the applicant, the deceased told him that she wanted to leave her husband and be with him. He stated that he was totally taken aback and told her not to talk about this as he was already due to get married to Ms Tamanna Singh.

(c) On a day prior to the applicant's marriage, according to the applicant, the deceased once again asked him to reconsider what she had said earlier. He stated that he once again told her that she should not be speaking to him. Thereafter, as per his statement, she sent him a photograph of her left arm on which she had made some cuts. He got worried and had told her to calm down and concentrate on her marriage and let him concentrate on his. On his return from leave after marriage he stated that Sqn Ldr Vishak Nair came to him and told him that he had forgiven his wife and told him also to forget everything and start afresh.

(d) From the statements of some of the witnesses in the C of I, it is apparent that in Jodhpur both the couples remained on friendly terms. In fact as per the statement of Sqn Ldr Vishak Nair in Mar 12 while at Bareilly, when he discovered the draft email message for Flt Lt Ishan Sharan that his wife had saved, he called him up and told him to stay away from them. He has also stated that on breaking off all ties with Flt Lt Ishan Sharan, he found his wife depressed and sulking all the time.

(e) After reaching Jodhpur, he told his wife that they would be on social terms with Flt Lt Sharan and his wife Mrs Tamanna. However, it is apparent that the deceased could not do away with a feeling of intense love towards the applicant and continued to reach out to him at every possible occasion.

(f) As per the applicant's statement he has admitted that they had feelings for each other in Bareilly but after he got married he had backed off completely. He emphasized that the affair in Bareilly was mutual and that he did not lure the deceased in any manner whatsoever.

(g) Although the applicant was not obliged to, he made a confessional statement to an independent officer detailed to record it. This statement (supra) is in addition to the statement in the C of I which was recorded on oath under the provisions of para 790(a) of the Regulations. In his confessional statement he stated that he was in a relationship with the deceased from August, 2011 but later realized that whatever had happened was not correct

and when the deceased expressed her desire to leave her husband and be with him, he was not expecting it and he decided to back off. After getting married he stated that he was told by Sqn Ldr Vishak Nair to forget about the past and start afresh. In his statement, he has confessed that after arriving at Jodhpur initially their interaction as couples was only social but he could feel a similar situation was developing as was the case in Bareilly. In his own words he has stated, *“At Jodhpur also I could feel the similar situation was developing as was a case in Bareilly. However, there was an error of judgment on my part again as I failed to take any step to stop it. I always thought that this was just a phase which would pass by and did not inform any senior officer regarding the same. That is all sir”*. This statement was given by him voluntarily and has been video graphed.

(h) The circumstances immediately preceding the suicide can be summed up in these paragraphs as brought out in the C of I:-

- i. On 24.11.2012 Sqn Ldr Vishak Nair, while on duty at ORP, came across telephone logs of conversations between the applicant and his wife of considerable duration.
- ii. On 25.11.2012 the deceased and her husband had a fight over the Facebook Chat Log. Based on the above, Sqn Ldr Vishak Nair wanted a separation from his wife and told her to inform her parents. While she initially agreed, she later on changed her mind and did not want to inform her parents.
- iii. In the C of I he had also stated that he did not actually want to separate from her but wanted her parents to know about her activities so that she could be stopped from doing so.
- iv. On that fateful night on 27.11.2012, the husband of the deceased Sqn Ldr was adamant on his decision to separate. The possibility of marrying Flt Lt Ishan Sharan being non-existent and she must have been in a state of emotional turmoil with feelings of isolation.
- v. The deceased had landed herself in a very precarious situation wherein she was unable to continue her relationship as a wife due to her relationship with the applicant. Also there was a possibility of a loss of face in the event the matter coming to the notice of her parents owing to their high opinion about her husband.
- vi. The applicant's refusal to marry her along with the insistence of her husband for a divorce put tremendous psychological stress and emotional turmoil on the deceased who in any case appeared to possess a highly strung and temperamental personality despite an easy going and fun loving exterior. These two factors perhaps pushed her to take her own life.

33. Although we are of the opinion that the C of I has been done in an extremely thorough manner, insofar as examination of the witnesses, the deliberations and in arriving at the findings are concerned, we are constrained to note the non-application of para 790 of the Regulations, right from the commencement of the C of I during the examination of witness No. 1 Sqn Ldr Vishak Nair on 02 Dec 12, who at the very beginning, stated that the ***arguments between him and his deceased wife were regarding her friendship with Flt Lt Ishan Sharan and their behavior (which was) highly inappropriate and beyond the normal limits of friendship.*** Therefore, at this juncture itself the C of I should have insisted on the presence of the applicant. Instead, he was sent away from Jodhpur on temporary duty. Again, when witness No. 1 was recalled and re-examined on 7.12.2012 wherein the relationship of his deceased wife with the applicant was highlighted, the applicant was not present on that day too in contravention of the terms of para 790 of the said Regulations. **Most importantly when the statement of witness No. 14, Mrs. Anju, the maid servant, was taken on 11.12.12 wherein she has alluded to adultery between the deceased and the applicant, the applicant's presence was not insisted upon.**

34. We believe it was imperative that the applicant should have been present throughout the recording of this statement. However, it was only on 12.12.12 after recording of the statement of witness No. 15 Sqn Ldr Vishal Banka, that the C of I deliberated upon the evidence recorded up to that stage and then realized that the character or professional reputation of the applicant was likely to be affected, and hence the Court decided to take recourse to para 790 (a) of the said Regulations against him. Thus only on 13.12.12, Flt Lt Ishan

Sharan was called by the C of I under the provisions of para 790 (a) and (b) of the said Regulations. The C of I then allowed him to examine the statements of all witnesses including the documentary evidence produced up to that stage. After that, he was permitted to record his confessional statement before an independent recording officer and permitted to cross-examine Witness No. 14 Mrs. Anju, the maid servant. He was also permitted to, but he declined to cross-examine Witness No.1, viz., Sqn Ldr Vishak Nair.

35. In the judgment of the Armed Forces Tribunal, Principal Bench, in the case of Col Kamal Deep Singh vs. Union of India & Others (supra) the Tribunal held:-

***“The Army Rules 180 is very sacrosanct and it gives the full opportunity to the incumbent against whom it is invoked when military reputation and character is involved. In this case we find that rule was invoked against the petitioner. That means Rule 180 was invoked right from the beginning and in that 14 witnesses were examined in presence of the petitioner but subsequently remaining witnesses i.e. upto 48 witnesses were examined when petitioner was asked to go out and the deposition of the remaining witnesses were taken and copies of statement was given to him for cross-examining those witnesses by calling them again. It is true that petitioner was give opportunity to cross examine these witnesses, but this conduct of Court of Inquiry of asking the person against whom Rule 180 has been invoked to go out and examine large number of witnesses in his absence is something unheard of. The Rule 180 clearly mandates that the incumbent should be given full opportunity to participate and to remain present. ....This is not true spirit of invoking Rule 180 and we cannot subscribe to this. The participation throughout inquiry is a must. Therefore, this illegality in conducting of Court of Inquiry goes to the root of the matter and this renders the entire Court of Inquiry vitiated.*”**

***22. -----But in the present case, the Court of Inquiry was totally against the true spirit of AR 180 and that cannot be sustained. Therefore we hold that the Court of Inquiry was bad in the law.”***

36. So using this very ratio, the non-application of para 790 of the Regulations right from the very beginning has vitiated the C of I, as the initial statements of the two important witnesses ie Witness No 1, Sqn Ldr Vishak Nair and Witness

No 14, the maid Servant, Mrs Anju were made in the absence of the applicant. The subsequent questioning of Witness No.14 and taking down additional statements and questioning of Witness No.1 by the applicant from 13.12.12 onwards, cannot in any way controvert the fact that their initial statements were made in the absence of the applicant. **The authorities cannot justify non application of the said regulation right at the very beginning in the C of I on 02.12.12 simply because they apprehended an untoward situation, although fully being aware of the fact that the character of the applicant is likely to be affected and that he was likely to be blamed. This untoward situation continued to exist even on 13.12.12, ten days after the C of I first met and the day the applicant was present in pursuance to the order of the C of I.** Hence, this ground taken by the counsel of the respondent appears to be specious, to say the least. This act of calling the applicant to be present after two crucial witnesses were examined in his absence, is also not in keeping with the oft quoted legal maxim that has been cited in innumerable judgments which states that ***not only must justice be done; it must also be seen to have been done.***

37. In the show-cause notice, the letter of JAG branch of the Air Force, dated 04 February, 2010 (supra) extracts of which are reproduced in para 22 above, regarding indecent and scandalous behavior has been referred to.

38. Paragraphs 8, 9, and 10 of the letter and its wordings ***“stealing the affection of a wife of a brother officer”*** smacks of patriarchy and punctilious mindset. While certainly extra marital relations should not only be discouraged and disapproved in no uncertain terms, to hold only one party responsible, that is, the male and not the female who may be as educated, as mature, even older and senior than the male is reflective of a pre-disposed and biased

mindset that also assumes that the wife of a brother officer is the property or chattel of the male and not an independent person in her own right who has the freedom to choose to live her life on her own terms. It does not take into account that in a marriage in the 21<sup>st</sup> century, a well qualified, educated wife especially one in the Services and from a cosmopolitan background who holds the same rank as her husband does have a mind of her own, a free will of her own, may pursue a path, however abhorrent and objectionable to her husband, including having an affair. In this case it is apparent that the deceased lady officer wished to sustain the relationship and the applicant though initially a willing partner does not seem to have “lured her into the relationship.” An adulterous relationship in this particular case, while allegedly existing in Bareilly in between Aug and Dec 2011, has not been conclusively proven to have been in existence in Jodhpur.

39. The offence of adultery must be understood in the light of not only the relevant IPC Section 497 governing it, but also in the light of prevailing social mores. By the nature of offence, direct evidence of adultery may not exist. However, even some evidence showing opportunity and desire between the man committing adultery and the woman (wife) with whom he is doing so must be shown to exist. If it is so proved in a Court of Law, then the evidence has to satisfy the requirement prescribed of the word “proved” in Section 3 of the Indian Evidence Act. Therefore, it is essential that inference of guilt is fully established by unimpeachable evidence beyond a shadow of doubt which unerringly points towards the guilt. No Court of Law can take cognizance of an offence of adultery except upon a complaint made by the husband. In such a case, it is necessary that a complaint is filed by the husband, who is the aggrieved party.

40. In this particular case, the husband though suspecting an adulterous relationship in Bareilly, believed it had come to an end after he had warned his wife as well as the applicant and also since that the applicant himself had got married. Subsequently, as the husband assumed that since this relationship had come to an end, coupled with the fact that his wife remaining depressed, decided in resuming social relations with the applicant and the applicant's wife, with both couples meeting on a regular basis. There was no reason for him to suspect anything untoward. However on seeing the Facebook chat log of 2011 vintage between his wife and the applicant on 25th November, 2012, a log that pertained to the previous place of posting in Bareilly, coupled with evidence of long drawn out telephonic conversations between his wife and the applicant when they were both on duty in different duty rooms of different units which he discovered on 24 November 2012, led him to conclude that the feelings of his wife towards the applicant were undiminished and hence he became insistent on the divorce. It would not be out of place to mention that most husbands in his position would have done the same, given that the implicit trust he placed in his wife despite her past indiscretions, was believed by him to have been shattered once again. As to a question of whether a physical relationship actually existed in Jodhpur, the evidence of the maid servant, Smt Anju, Witness No.14 is not conclusive, although it does point to a great degree of intimacy and affection that the two had for each other.

41. However the conclusion that can be drawn is that the relationship was certainly intimate in nature and not purely Platonic, wherein the deceased lady officer continued to express her desire of love to the applicant which he has conceded to but also admittedly, had failed to stop. Given the background of such a situation as obtaining in Bareilly, it was improper for him to have

continued to interact with her, when in the given circumstances, he could not, beyond a point, offer any counseling to her. He should have appropriately reported the matter to his senior or any senior he believed she had confidence in, although knowing that the nature of his relationship with her would perhaps become public.

42. As elucidated in the paper ***Causation in the Law*** published in the ***Stanford Encyclopedia of Philosophy*** on Thurs Nov 8, 2001 and its substantive revision Wed Nov 17, 2010, to explain causation in law, “One function, perhaps fundamental, is forward-looking: that of specifying what will happen and by what stages if certain conditions are present together. This use of cause serves to provide recipes and make predictions. It also yields the idea of a causal process. Another function is backward-looking and explanatory: that of showing which earlier conditions best account for some later event or state of affairs. A third function is attributive: that of fixing the extent of responsibility of agents for the outcomes that follow.” In this particular case, it is the second and third explanations that have led to the applicant being held responsible for the events leading up to the suicide of Sqn Ldr Anindita Dasgupta.

43. The paper goes on to elucidate that in law “the second and third of these functions of the notion of cause are prominent, often in combination. Many legal inquiries are concerned to explain how some event or state of affairs came about, especially an untoward event such as death or a state of affairs such as insolvency. But in law the third function is particularly salient and controversial. Whether someone is liable to punishment or to pay compensation or is entitled to claim compensation often depends on showing whether the person potentially liable or entitled has caused harm of a sort that the law seeks to avoid. In law the main grounds of responsibility for harm are

*therefore (i) an agent's personal responsibility for causing harm and (ii) a person's responsibility arising from the fact that he, she or it bears the risk of having to answer in legal proceedings for the harm in question.*

*Both inside and outside the law many actions are regarded as wrongful whether or not they cause tangible harm. Moreover the imposition of penalties in civil law and of punishments in criminal law need not bear any relation to the harm (if any) caused by the conduct for which the penalty or punishment is imposed.*

*Legal responsibility is often imposed, in the context of interpersonal relationships, on those who influence others by advising, encouraging, helping, permitting, coercing, deceiving, misinforming or providing opportunities to others that motivate or enable them to act in a way that is harmful to themselves or to others.”*

44. So in this case, the authorities should have asked themselves if there was indeed a legal responsibility on the part of the applicant towards the suicide of the lady officer or an adulterous relationship with her. If the answer to either of these two questions was a “YES”, then they should have recommended his trial by a GCM or recommended recourse to punishing him summarily under Section 86 of the Air Force Act 1950.

45. An extract from Section 86 of The Air Force Act, 1950 is reproduced as under :-

*“86. Punishment of Officers and warrant officers – An officer having power to convene a general court-martial or such other officer as is with the consent of the Central Government, specified by 1[the Chief of the Air Staff] may, in the prescribed manner, proceed against an officer below the rank of squadron leader or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say, -*

*(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service*

*for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial.*

*(b) Severe reprimand or reprimand.*

*(c) \*\*\*\*\**

*(d) \*\*\*\*\*”*

1            *Subs. By Act 19 of 1955, sec. 2 and Sch. for “the Commander-in-Chief”*

46. If however, the answer was a “NO”, then the Air Force authorities should not have viewed it only through the narrow prism of their policy of 04 Feb 2010 (supra) that *“no leniency whatsoever is to be shown to him and prompt action is to be initiated for the termination of his services under the relevant rules. “*, but could have, after due process, awarded him a reproof under para 712 of the Regulations that has been amplified by Air Force Order 03/2008.

47. Relevant extracts of Air Force Order 3/2008 paras14-20 which includes Para 712 of the Regulations for the Air Force 1964 (Reprinted Edition 2003) are set out as under:-

**“AWARD OF CENSURE**

14. *Censure is a matter of custom of Service, in accordance with which, it may take the form of ‘Reproof’, ‘Displeasure’ or ‘Severe Displeasure’, and may be awarded for offences/lapses which are not of such a serious nature as to merit disciplinary action under the Air Force Act, 1950, or where disciplinary action is considered inexpedient or impracticable. Award of censure may, at times, be construed to amount to condonation of the offence barring disciplinary action under the Act. Therefore, censure is not be awarded, when there is a likelihood of any superior authority considering disciplinary action under the Air Force Act, 1950.*

15. *Censure is not to be awarded by Air Force authorities to personnel of other services serving with the Air Force. However, if the Air Force authority, under whom a person belonging to another service is serving, considers that in the interest of discipline, such a person requires to be censured, the details of the case are to be forwarded to Air HQ [JAG (Air)] through proper channel with suitable recommendations of the Command HQ. After due consideration, Air HQ will refer the case to the appropriate Service HQ or take such action, as deemed fit.*

## **Officers**

16. **Reproof.** *The authorities who may award 'Reproof' to officers, the circumstances and the manner of its award and record have been specified in Para-712 of the Regulations for the Air Force (1964).*

### **Extract of Para 712 of Regulations for Air Force (1964)**

#### **712. Reproof of Officers and Warrant Officers.**

(a) *A Commanding Officer or any superior Air Force officer may reprove an officer or warrant officer under the command for an offence which, in his opinion, is not to such a serious nature as to merit disciplinary action under the Air Force Act, 1950. The reproof of an officer or warrant officer is not a recognized punishment under the Act and will not be entered in the officer's or warrant officer's service record through it may be referred to, if necessary, in a confidential report on the officer or warrant officer concerned. In order to avoid any confusion with a 'reprimand' under the Act, it is not to be referred to by any term other than 'reprove' or 'reproof'.*

(b) *Great care will be taken that the procedure in Sub Para (a) is not adopted when any superior authority is likely to consider that the offence calls for disciplinary action under the Air Force Act, 1950, as the reproof might, in certain circumstances, be held to amount to condonation of the offence barring disciplinary action under the Act.*

17. *The AOC-in-C/AOA/CO may also reprove an officer who was serving under his command at the time of the commission/omission of the impugned act or omission.*

18. **Severe Displeasue/Displeasure.** *'Severe Displeasure'/'Displeasure' may be awarded to an officer by the Central Government or the Chief of the Air Force Staff, or the AOC-in-C under whom the officer is serving or was serving at the time of the commission/omission of the impugned act/omission or misconduct or by the AOA, if the officer is serving, or at the time as aforesaid, was serving in Air HQ or in a Unit under the direct administrative control of Air HQ.*

19. *'Severe Displeasure'/'Displeasure' of the Central Government will normally be conveyed in the form of a letter and the same will be kept permanently in the personal file of the officer.*

20. *'Severe Displeasure' by the CAS or the AOC-in-C/AOA will be expressed in terms of a period not exceeding 36 months in the case of award by the CAS and not exceeding 18 months in the case of award by the AOC-in-C/AOA. The period of award of 'Severe Displeasure' (preferably be awarded in multiples of six months) is to be specified at the time when such Censure is approved by the competent authority. There will be no period of award for 'Displeasure'. A copy of the letter conveying 'Severe Displeasure'/'Displeasure' of the COS, AOC-in-C/AOA to the officer will be kept permanently in the personal file of the concerned officer at both Air HQ (JDPO-2) and his Unit.*

48. In O.A. No. 41 of 2013, the Regional Bench at Mumbai of the Armed Forces Tribunal in the case of N. Kalyankumar vs. Union of India & Ors. which pertained to the allegations of stealing the affection of the wife of a brother officer and adultery amongst other allegations, delivered a judgment on 25.06.2014, the relevant portion of which is reproduced below :

*“ Under these circumstances, we find that the order of discharge from service against the applicant is very harsh, severe and shockingly disproportionate to his misdemeanor or misconduct. In **Ranjit Thakur V/s. Union of India & Ors. (1987) 3 Supreme Court Cases 611**, their Lordships observed thus :*

***“25. Judicial review generally speaking, is not directed against a decision, but is directed against the “decision making process”. The question of choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of probability, a part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of court martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In Council of Civil Service Unions V. Minister for the Civil Service, Lord Diplock said :***

***“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call “illegality”, the second “irrationality” and the third “procedural impropriety”. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in future of the principle of ‘proportionality’ which is recognized in the administrative law of several of our fellow members of the European Economic Community;....”***

**26. In *Bhagat Ram V. State of Himachal Pradesh* this Court held :**

***“It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution”.***

The above observations by the Hon’ble Supreme Court would be aptly applicable to the facts and circumstances of the present case. We are aware that we are not sitting in appeal against the order of conviction or sentence passed under section 15 of the Armed Forces Tribunal Act by the Court Martial, but in judicial review under section 14 of the Armed Forces Tribunal Act. But in judicial review, as held by the Supreme Court in *Ranjit Thakur* if the penalty imposed by the authority is disproportionate to the misconduct, that will be violative of Article 14 of the Constitution”.

49. While not condoning extra marital relationships, we must, at the same time, reflect upon the changing mores of our society. With women joining the Armed Forces in large numbers, working closely and socialising with their male counterparts, it is unreasonable to expect that the Armed Forces would be immune to social changes in relationships between the two sexes, aided in no small measure by rapidly advancing technology. While such issues adversely impact on unit cohesion and ethos of the Services and should be rightly discouraged, the time has come when aspects such as unfortunate break ups of existing marital relationships, consensual relationships with others and infidelity should not be viewed so seriously as to lead to the dismissal or even graver punishments that the IPC and statutory Acts of the Army, Navy and Air Force provide for.

50. In the final analysis it appears that administrative action by way of dismissal of the applicant by the Government of India based on a flawed C of I was harsh especially when it is observed that the deceased seemed insistent on continuing with the relationship. It is also agreed that in these sensitive circumstances it would have been unwise and inexpedient too, to have tried the applicant by a GCM. The officer, we feel, should have been either summarily tried under Sec 86 of the Air Force Act, or censured under para 712 of the Regulations, or at best, been asked to resign his commission under the Air Force Rules 16(8) (supra) instead of being dismissed from service. This option at that point in time could have been exercised by the Air Force authorities. It is regrettable that none of the above options were considered by the Air Force authorities and they proceeded with a single minded intent to

dismiss the applicant from service expeditiously without taking into account the circumstances that led to the tragedy.

51. However, at this belated stage when much water has flown under the bridge, a quietus needs to be put on the issue, and when the two main protagonists i.e. the applicant and the husband of the deceased would still be struggling to come to terms with this tragic episode and would have moved on with their lives. Therefore, it would be imprudent to revisit this sensitive C of I, despite the fact that provisions of para 790 of the Regulations were not applied right from the beginning of the C of I, as it would reopen old wounds. It is also admitted that after this unfortunate incident and after the dismissal of the applicant from service, it would be inexpedient and unwise to ask the Air Force authorities to take a fresh look at the entire episode in the light of the conclusions we have drawn. However, we cannot allow the stigma of dismissal to continue to remain on record given the special circumstances of the case. Hence, we believe that the ends of justice would be adequately served if the **dismissal from service** of the applicant is converted into **release from service** under Rule 13 of the Air Force Rules, 1969, which is reproduced as under:

***“13. Release.** A person subject to the Act may be released from the air force in accordance with these rules, or in accordance with any orders or instructions made in that behalf by or under the authority of the Central Government”.*

52. With the above observations and findings, the application is allowed in part and the applicant is to be considered as **released from Service** from the date of his dismissal i.e. 28 June 2013 with whatever financial benefits (if any) that he may be entitled to.

53. The application is thus disposed of.

54. There will be no order as to costs.

55. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties after observing the requisite formalities.

(Lt Gen Gautam Moorthy)

Member (Administrative)

ss

( Justice Amar Saran )

Member (Judicial)