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Woman pilot moves Jammu & Kashmir High Court alleging sexual harassment by Flight Commander; non-compliance by IAF with POSH Act

The petitioner has also raised a pertinent legal issue regarding the applicability of the Sexual Harassment at Work Place Act (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and Rules to the Armed Forces.

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The Jammu & Kashmir High Court has sought the response of Central government and Indian Air Force (IAF) officers in a plea by a woman pilot alleging sexual harassment on the part of her Flight Commander and the subsequent unfair manner of inquiry by the Internal Complaints Committee (ICC).

The plea said that the accused officer repeatedly demanded sexual favours from the petitioner and passed objectionable comments against her, while touching her inappropriately.

"He touched her on her shoulder from behind and made lewd remarks with lustful eyes and demeanor "Le tujhe touch kiya ab kaise karegi apne aap ko sanitise?" Petitioner didn't feel comfortable but didn't know how to react as she had not expected this response. The said touch was unwelcome and extremely unsolicited and was an assault on the dignity of the complainant being a lady officer," the petition said.

Importantly, the petitioner has also raised a pertinent legal issue regarding the applicability of the Sexual Harassment at Work Place Act (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and Rules to the Armed Forces.

In this regard, the petitioner also took strong objection to the manner in which the Internal Complaints Committee constituted under the 2013 Act was conducting its proceedings when she filed a complaint against the accused.

"That on January 25, 2021 the ICC started and during the ICC the respondent no. 8 and few other officers again started intimidating and harassing petitioner and her witnesses and total 6 days cross examination of petitioner by respondent no. 8 has taken place which is unheard of in a fact finding committee i.e. the ICC. About 300 questions were put to the petitioner and even obscene and dishonourable questions were put to the petitioner without ICC's intervention and without objecting on irrelevant and obscene questions like "who is a nursing women, did any doctor force you to nurse your child?" etc. The entire concept of lengthy cross examination is making the same a full fledged trial than a summary fact finding inquiry," the petition said.

The petitioner claimed that the Air Force Order (AFO), under which the ICC proceedings are held, is violative of Article 14 of the Constitution. Under this procedure, the complainant does not get the right to cross-examine the accused or his witnesses under the AFO, but she and her witnesses can be subject to cross-examination.

Counsel for the petitioner, Additional Advocate General **Aseem Sawhney**, argued that the respondents are not implementing the provisions of the 2013 Act and Rules in letter and spirit, and are adopting their own self-devised arbitrary methods to somehow silence the petitioner and hush up the inquiry.

Besides seeking a direction to the ICC to hold a fair inquiry, the petitioner has also prayed for the transfer of the accused person so that he does not threaten and harass her and other witnesses.

Justice **Sanjeev Kumar** issued notice to the Union Ministry of Defence and other Air Force officials, asking them to file their responses within four weeks. The Court also stayed the proceedings before the ICC. Assistant Solicitor General **Vishal Sharma** accepted notice on behalf of the Union.

By way of background, during the petitioner's time in a Remotely Piloted Aircraft (RPA) Squadron, the accused was a Squadron Leader. On numerous occasions, the accused had tried to come close and tried to befriend her, the petitioner alleged in her plea.

"The petitioner was getting indications that accused had certain wrong intentions about her and was trying to somehow cross the limits and come closer to petitioner," it was stated.

Later, she was transferred to be posted at Awantipur with her husband, an Air Force officer. After two years and two months, the petitioner got posted to Jammu, where the respondent was posted as a Flight Commander.

The harassment then began with lewd remarks and inappropriate behaviour.

“The respondent tried to cross his limits and he passed a lewd and sexually coloured remark/comment... isko hath lagao toh current lagta hai. Petitioner firmly told him not to pass such lewd comments,” the plea alleged.

It is alleged that at a Diwali party, the accused again passed wanton and lustful remarks at the petitioner. The fact that the petitioner was not showing any interest in his lewdness or getting cosy with him, started reflecting in the official work as well.

“The respondent no. 8 (accused) asked the respondent no. 4 (Commanding Officer of Air Squadron) to give her a written order to proceed in service aircraft without her son, while respondent no. 8 was aware that petitioner was nursing her child and her infant child takes mother’s feed still his tortures were unabated and when petitioner conveyed her constraints and also the fact that despite of other Op crew availability, respondent no. 8 asked respondent 4 to take action against petitioner,” the plea said.

When the harassment continued unabated, the petitioner eventually filed a complaint with the IAF authorities on December 18, 2020.

However, the official respondents did not perform the duties of an ideal employer and did not assist the petitioner to lodge any complaint or FIR with the police, it was submitted. The petitioner eventually had to report the matter to the police on her own and an FIR was lodged based on the same.

The accused got bail in the case and subsequently filed a plea under Section 482 of the Code of Criminal Procedure (CrPC) before the High Court to quash the case.

Meanwhile, in ICC proceedings that began consequent to the complaint, the petitioner and her witnesses were subjected to intimidation and detailed cross-examination over the course of 6 days. The petitioner herself was denied the opportunity to cross-examine the accused and his witnesses, the plea alleged.

In this regard, the petitioner took specific objection to the AFO 31/2015, which governs the proceedings.

“The AFO says that first the aggrieved woman will make her statement then she will be cross examined by the respondent. Then her witnesses will depose their statements and they would be cross examined by the respondent. Now the respondent will make his statement again to the ICC having additional knowledge after the earlier procedure and then his own witnesses will be produced, however the right of the aggrieved woman to cross examine has not been provided,” the petition explained.

This, the petitioner contended, is violative of right to equality under Article 14 and principles of natural justice.

“Para 18 and para 34 (g) (j) (l) of AFO 31/2015 are illegal and ultra vires to the Sexual Harassment at Work Place Act 2013 and Rules made there under and the Constitution of India, as the same is discriminatory in nature and violative of Article 14 of the Constitution of India as the rights of the petitioner being aggrieved woman being person subject to Air Force Law have not been provided including right to cross examine which is an essential ingredient of the principal of natural justice,” it was submitted.

Either the petitioner should also get the right to cross-examine the accused and his witnesses or the same right should not be extended to the accused, she contended.

Moreover, the entire concept of lengthy cross-examination is making the proceedings before the ICC a full-fledged trial than a summary fact-finding inquiry which is it supposed to be, she further submitted.

It was also highlighted that the composition of ICC was changed thrice without any explanation.

“The ICC is not a temporary fact-finding body but a committee with a fixed tenure. However, the same has been changing one after the another without even spelling the reasons to the petitioner,” it was stated.

Based on the above the petitioner made the following prayers:

- Direct respondent no. 5 (Presiding Officer of ICC) to conduct a fair inquiry into the allegations of “sexual harassment at work place by petitioner” in accordance with the Sexual Harassment at Work Place Act 2013 and Rules;
- Respondents no. 3 and 4 be directed to provide all necessary assistance to a fair inquiry by the ICC;
- Direct the respondents no. 1-3 to transfer the respondent no. 8 out of the position of authority so that the witnesses of the petitioner are neither threatened nor harassed and a fair inquiry is conducted in free and fearless manner;
- Declare para 18, para 34 (g) (j) (l) of AFO 31/2015 as illegal and ultra vires to the Sexual Harassment at Work Place Act 2013 and Rules made thereunder and the Constitution of India, as the same is discriminatory and violative of Article 14 of the Constitution of India.

The matter will be heard next on May 10.