

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. 350/1391/2016



Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member

Shri Gopal Chandra Karmakar,
Ex-P.No.Sec/T.No.409/HMS/10 Ex-Employee,
Ordnance Factory, Dum Dum,
Kolkata – 700 028
S/o. Late Balai Lal Karmakar,
Residing at Village – Basina,
Post office – Rajarhat, Bishnupur,
Police Station – Rajarhat,
District – 24-Parganas(North),
Kolkata – 700 135.

..... Applicant.

Versus

1. Union of India,
Service through the Secretary,
Ministry of Defence,
Department of Defence Production,
Government of India,
South Block,
New Delhi – 110001.
2. The General Manager,
Ordnance Factory,
Office at Dum Dum Jessor Road,
Kolkata – 700 028.
3. The Assistant Works Manager/Admn.
Ordnance Factory,
Office at Dum Dum Jessor Road,
Kolkata – 700 028.
4. Senior Accounts Officer(Fys),
Ordnance Factory,
Office at Dum Dum,
Jessor Road,
Kolkata – 700 028.

5. Inquiry Officer,
JWM, Ordnance Factory,
Office at Dum Dum,
Jessore Road,
Kolkata 700 028.



..... Respondents.

For the applicant : Ms. D. Bhattacharya, Counsel

For the respondents : Mr. M.K. Ghara, Counsel
Mr. T.K. Chatterjee, Counsel

Date of Order: 10.2.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.a) To withdraw/quash/cancel/set aside the impugned Final order dated 23 December, 2015 passed by the Under Secretary, Govt. of India in the name of the President of India being No.MOD's order No.22(10)/2013/D(Estt/NG) issued from the office of Assistant Works Manager/A for Officer-in-charge vide memo no.42/040/CS-591/D&L.S dated 30th December, 2015 immediately (Annexure-A5);

b) To restrain the General Manager, Ordnance Factory, Dum Dum, Kolkata – 700 028 from giving any effect and/or further effect to the memo no.42/050/T-126/D&LS dated 11th July, 2016 till the disposal of the instant application; (Annexure – "A7")

c) To pass such other further order or orders as to Your Lordships may deem fit and proper;"

2. The order impugned is extracted verbatim hereinbelow with supplied emphasis for clarify:

"No. 22(10)/2013/D(Estt/NG)

Government of India

Ministry of Defence

Department of Defence Production

New Delhi, the 23rd December, 2015

ORDER

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Whereas disciplinary proceedings were initiated against Shri Gopal Chandra Karmakar Ex. Fitter HS O.F. Dum Dum under Rule-14 CCS (CCA) Rule-1965 for gross misconduct of – (i) having a spouse living has entered into marriage with Smt. Kajal Karmakar (Nee Mukarjee) without obtaining any decree of divorce from a competent court of law in contravention to the relevant provisions of CCS (Conduct) Rules – 1964 (ii) the said Gopal Chandra Karmakar acted in manner unbecoming of Government servant amounting to gross misconduct in wilful contravention of provisions of sub rules (1) (iii) of Rule 3 of CCS (Conduct) Rules-1964. Shri Karmakar retired on 31.01.2011 and accordingly the Disciplinary proceeding were converted under Rule 9 of CCS (Pension) Rules, 1972.

2. AND WHEREAS after considering the IO report, representation of the Shri Karmakar and evidence borne on record, the Competent Authority decided to forward the case to UPSC as per provision of Rule 9 (1) of CCS (Pension) Rule, 1972. Accordingly, the case was referred to UPSC for its advice.

3. AND WHEREAS the UPSC has advised vide letter No. F-3/28/2015-S-I dated 09.09.2015 that the ends of justice would be met if penalty of "withholding of 50% (fifty percent) of monthly pension otherwise admissible to CO Shri Gopal Chandra Karmakar for a period of 7 (seven) years is imposed on him. His gratuity may be released, if not required otherwise to be withheld in any other case.

4. AND WHEREAS a copy of the aforesaid UPSC advice was forwarded on 16.09.2015, to Shri Gopal Chander Karmakar, for submitting his representation if any, on UPSC advice, in writing within 15 days from the date of receipt of this Memorandum.

5. AND WHEREAS Shri Gopal Chandra Karmakar has not submitted any representation against UPSC advice despite sufficient opportunity given to him. Since, no representation has been received against UPSC advice, it is assumed that the CO does not have any defense to make.

6. AND WHEREAS the President of India after careful consideration of the case record and the advice of UPSC, is fully satisfied that the charges levelled against CO are established and mis-conduct on the part of Charged Officer is grave and he deserves the penalty. The President of India is also satisfied with the reasons / justification given by the UPSC for holding the Articles of charges proved against the CO and also the quantum of punishment advised.

7. NOW THEREFORE the President in exercise of the powers conferred on him under Rule 9 of CCS (Pension) Rules 1972 hereby imposes penalty of "withholding of 50% (fifty percent) of monthly pension otherwise admissible to CO, Shri Gopal Chandra Karmakar, Ex-Fitter (HS), O.F. Dum Dum for a period of 7 (seven) years". His gratuity to be released, if not required, otherwise to be withheld in any other case.

(By order and in the name of the President of India)

Sd/-

(Amlan Das)

Under Secretary to the Government of India

Shri Gopal Chandra Karmakar,
Ex. Fitter HS
O.F. Dum Dum

(Through GM, O.F. DUMDUM,)"

3. The applicant had earlier preferred O.A. 817 of 2014 that disposed of on 30.03.2015 with the following order:

"This application has been filed seeking the following relief:

- a) To withdraw/quash/cancel/set aside the impugned memo No. 01/100/GCK/ADV/IES/P.Cell/Estt dated 7.1.2014 and memo No. 01/100/GCK/ADV/IES/P.Cell/Estt dated 11.4.12 issued by the Assistant Works Manager, Ordnance Factory, Dum, Dum, Kolkata – 700028 forthwith immediately (Annexure W & R herein);
- b) To complete the disciplinary proceeding vide memorandum No., 42/040/C.S.-591/D dated 28.1.11 for which inquiry report was submitted on 12.4.12 since the long time was lapsed and the applicant is being deprived of his legitimate right to get retirement benefits within a time bound period;
- c) To direct the respondent authorities their men, agents and each one of them to clear up all the retirement benefits of the applicants immediately alongwith interest at the current rate for delay in settlement and disbursement thereon;"

2. The applicant Gopal Ch. Karmakar at the fag end of his service preferred an application on 23.6.2010 along with photocopy of his Marriage Certificate dt. 12.11.06 with one Smt. Kajal Karmakar (nee Mukherjee) whereas, as per the respondents, one Sushila Karmakar is receiving Maintenance from the applicant as per Civil Court's order. A Title Suit against Sushila Karmakar is pending before Ld. Court of Civil Judge (Jr. Divn.) at Barasat.

3. The applicant Gopal Chandra Karmakar on 21.8.11 was charge sheeted for having entered into a marriage with Smt. Kajal Karmakar despite having a spouse living. He was charged with a conduct unbecoming of a Government Servant amounting to gross misconduct in contravention of provisions of sub-rule (1)(iii) of Rule 3 of CCS (Conduct) Rules, 1964. The applicant retired from service on 31.1.11.

4. After his retirement he submitted his statement of defence on 25.3.11 whereby he denied the charges. The enquiry was conducted and report was served on the applicant on 11.5.12. The comments have been forwarded to the President of India since the applicant had retired in the meantime. However, no penalty has been inflicted till date. But due to the pendency of the proceedings the authorities in terms of Rule 69 of CCS (Pension) Rules have withheld the gratuity and allowed provisional pension of Rs. 7950/- The leave encashment due to the applicant has been paid on 31.7.4, CGEGIS has been released on 2.8.11 and GPF amount has been released on 18.1.11.

5. The respondents have justified withholding of gratuity amount by way of a reply. Further a supplementary affidavit has been filed in support of release of admissible dues as mentioned in the reply.

6. The applicant has tried to make out a case that pension and gratuity are not longer a bounty and has to be distributed by the Government to its employees on their retirement. However, nothing has been brought on record to manifest that despite non-conclusion of the proceedings the applicant is entitled to receive the withheld gratuity amount.

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xxx

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Thus we find no infirmity in the respondents' action of withholding gratuity invoking Rule 69 of CCS (Pension) Rules.



8. Since the matter is pending for a long time and due to non-conclusion of the proceedings of the applicant is being deprived of his gratuity, the OA is disposed of with a direction upon the respondents to make a honest endeavour to conclude the proceedings by way of a final order within three months from the date of receipt of the copy of this order which shall accordingly govern the release of the gratuity amount in view of the Rule 69 of CCS (Pension) Rules operating in the field. While issuing the final order due consideration shall be given to the judicial orders in regard to the status of Kajal Karmakar and Sushila Karmakar and the allegations leveled against the applicant of having entered into a marriage with Smt. Kajal Karmakar despite having a spouse living.

9. Accordingly the OA stands disposed of. No order is passed as to costs."

After the said order, the pending departmental proceeding converted to a Rule 9 proceeding under Pension Rules, was finalised with an order dated 23.12.2015 that is impugned in the present O.A.

4. A Contempt Proceeding, that was initiated alleging violation of the order passed in O.A. 817 of 2014, was dropped on 14.12.2017.

5. The respondents in this O.A. have averred as under, to justify imposition of penalty:

"The Respondents state that the allegation "when civil suit is pending, imposition of punishment upon the applicant is illegal" is not correct as disciplinary action is completely departmental action, which is regulated by CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965. Further, issuance of final order dated 23.12.2015 for imposition of penalty by the respondents cannot be stated as illegal, arbitrary, whimsical as all actions were taken as per the said rules and Govt. order. It is evident that the applicant preferred an application dated 23.06.2010 along with a photocopy of Marriage certificate stating that he had entered into a marriage on 12.11.2006 with Smt. Kajal Karmakar (Mukherjee), daughter of Late Baidyanath Mukherjee and requesting to endorse the name of his wife (Smt. Kajal Karmakar) in his service records. Further, it is evident from the records that Smt. Sushila Karmakar is admittedly the legal wife of the applicant and had been receiving maintenance allowance as per Court order as the legal wife of the said Shri Karmakar. The said applicant having a spouse living had entered into a marriage with Smt. Kajal Karmakar (nee Mukherjee) without obtaining any decree of divorce from a competent Court of Law and acted in a manner unbecoming of a Government servant amounting to gross misconduct in wilful contravention of the relevant provisions of the CCS (Conduct) Rules, 1964. Accordingly, the applicant was issued with a Chargesheet Memorandum dated 28.01.2011. It is not only observed from the documentary evidence but also from the oral evidence, that the Applicant himself admitted in the Court of Enquiry that he got married to Smt. Sushila Karmakar forcefully by relatives and others on 31.03.1976. He also admitted that soon after their marriage, Smt. Sushila Karmakar got pregnant. While she was carrying the child, he got himself detached from her and started living separately. He further admitted that he was living with Smt. Kajal Karmakar ever since 1986, but had got married to her in the year 2006. The Applicant also admitted that he never obtained any decree of divorce from a court of law. Therefore, the action taken by the Respondents is in order and in conformity with

the Rules in force; and hence, the penalty order passed by the competent disciplinary authority is strictly as per the legal provisions."

In support, Ld. Counsel Mr. T.K. Chatterjee would place the following documents:

Sl. No.	Documents with Brief details of facts	Annexure
1.	A copy of application dated 09 th October, 1986 preferred by the Applicant address to the General Manager, Ordnance Factory Dum Dum enclosing a copy of letter dated 08.10.1986 from his advocate Shri Bibhuti Dhara collectively in regard to payment of maintenance to his wife and child.	S-1 & S-2 respectively.
2.	A copy of order dated 17.03.87 passed by the Ld. Additional District Judge, at Barasat North 24 PGS, in Mat Case No. 142/86 directing the Applicant to pay monthly alimony for maintenance of Smt. Sushila Karmakar herself and her son.	S-3 (5 sheets)
3.	A copy of Voter I/Card issued by Election Commission of India in R/o Sushila Karmakar, wife of Gopal Karmakar.	S-4
4.	A copy of Minutes of court of inquiry on 25.10.2011 wherein the Applicant himself admitted that he got married to Smt. Sushila Karmakar forcefully by relatives & others on 31.03.1976. He also admitted that soon after their marriage, Sushila Karmakar got pregnant. While she was carrying the child, he got himself detached from her and started living separately. The Applicant further admitted that he was living with Smt. Kajal Karmakar ever since 1986, but had got married to her in the year 2006 but he never obtained any decree of divorce from any court of law.	S-5 (2 sheets)

The, Minutes of Court of Inquiry as 25.10.2011 at Srl. No. 4 supra reveals the following admission in the part of the applicant before the Court of Enquiry:
(Emphasis supplied for clarity)

"

Minutes of court of inquiry on 25/10/2011

The court of Inquiry started at 10.00 AM on 25/10/2011 in the office of JWM/MSS. The following people are present in the court of Inquiry

1. *Shri Avishek Kumar (I.O.)*
2. *Shri S.R. Maity (P.O.)*
3. *Shri Gopal Chandra Karmakar, Ex Fitter (HS, P.No. – 409), OFDC (AGS)*

Shri G.C. Karmakar, A.G.S. came to attend the court of Inquiry at about 10.00 AM on 25/10/2011.

The Inquiry Officer started examining the Accused Govt. Servant by asking questions in the following:

I.O. to AGS

Q.1 : Have you ever been married to Smt. Sushila Karmakar?

A.1 : Yes, I got married to Smt. Sushila Karmakar forcefully by relatives & others on 31.03.1976.

Q.2 : Are you staying with Smt Sushila Karmakar?

A.2 : No. Soon after my marriage with Sushila Karmakar, she got pregnant. While she was carrying child, I got myself detached from her and started living separately.

Q.3 : Prior to your marriage with Sushila Karmakar, where did you live in?

A.3 : I lived in a village of North 24-Parganas. The address was Vill – Dehera, P.O. – Rajarhat, PS Rajarhat 24-PGS(N). But now my residential address is Vill – Basina, P.O. – Rajarhat, Bishunupur PS – Rajarhat, 24 Parganas(N).

Q.4 : Where was Smt. Sushila Karmakar residing before marriage with you?

A.4 : She was residing at Vill. + P.O. – Jagarnathpur, P.S. – Barasat.

Q.5 : When did you get married to Smt. Kajal Karmakar?

(On being asked question No. 5, the AGS made a telephone call (Phone No. 8013834102) from the office of Shri Avishek Kumar, JWM (IO) to Smt. Kajal Karmakar for ascertaining the correct information. After having a talk with Smt. Kajal Karmakar, the AGS replied to Q.No.5 as follows:)

A.5 : I was living with Smt. Kajal Karmakar since 1986, but got married to her in the year 2006.

Q.6 : Did you obtain any decree of divorce between you and Smt. Sushila Karmakar from the Court of Law?

A.6 : No, I never obtained any decree of divorce, not did my lawyer advise me to take such type of steps of legal process.

The inquiry is adjourned for the day and the next date of hearing is fixed on 16/11/2011 at 10.00 AM at JWM/MSS Office. No further communication will be made in this regard to anybody.

The proceedings have been explained to the A.G.S. in Bengali by the PO.

Sd/-
(GOPAL CHANDRA KARMAKAR)
AGS

Sd/-
(S.R. MAITI)
PO

Sd/-
(AVISHEK KUMAR)"
IO

6. We heard the Ld. Counsels, considered theirs rival contentions carefully and perused the records.

7. In **B.C. Chaturvedi Vs. Union of India & Ors., (1995) 6 SCC 749**, it was held:

"Judicial review is not on appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal." (emphasis added)

In **Union of India vs. H.S. Goel [(1964) 4 SCR 718]**, it was held:

"There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that no mala fides are since alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent." (emphasis added)

In **M.V. Bijlani vs. Union of India (2006) 5 SCC 88**, Hon'ble Apex Court held:

"....Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

In **Roop Singh Negi Vs. Punjab National Bank, (2009) 2 SCC 570**, the Hon'ble Apex Court held as under:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved."

8. Having understood the true import of the legal propositions enumerated supra, we note as under:

(i) The applicant has emphatically admitted having married for a second time during subsistence of 1st marriage.

(ii) Rule 21 of CCS, CCA Rules envisage as under:

21. Restriction regarding marriage

- (1) *No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and*
- (2) *No Government servant having a spouse living, shall enter into, or contract, a marriage with any person;*
- (3) *Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that*
 - (a) *such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage;*
 - (b) *there are other grounds for so doing.”*

(iii) The applicant has not alleged any procedural flaw in the conduct of the proceedings. He has simply denied the charge of bigamy on the ground that the Civil Suit for declaration filed by Sushila Karmakar is pending and therefore Sushila is yet to obtain a declaration in her favour, but the applicant has not denied the factum of his marriage with her.

(iv) Bigamy by Govt. servant has been held as a misconduct UOI Vs. K.L. Micheal, Karnataka High Court WP No. 981/19 (S-CAT) in identical circumstances, where “under Rules 9 of Railway (Services) Pension Rules, 1993 and Rule 21 of Railway Services (Conduct) Rules, 1966 an enquiry was initiated against the respondent for the misconduct of getting married for the second time during the subsistence of his first marriage; and when the provisions permit, rightly an enquiry was initiated and the Enquiry Officer has given fullest opportunity to the respondent and imposed the punishment of reduction of pension to 50% for a period of five years since the respondent has retired from service on attaining superannuation” and “the same was challenged before the Central Administrative Tribunal and the Tribunal by its order dated 10th October 2018 passed in Original Application No. 170/00250/2017 has quashed the order of punishment. Against the same, this appeal is preferred by the employer-Railway”,



Hon'ble Court observed as under:

" Respondent has admitted that he has got married with V. Dhanamary on the ground that the first wife Suguna left seven years ago and it was presumed that she died. This admission itself is sufficient. When such being the case, it is to be held that the respondent has committed an act of misconduct. But, the petitioner-Authority in order to provide a reasonable opportunity to the respondent and in compliance of natural justice, framed Articles of charge and appointed an Inquiry officer to go into the matter. There is no scope for presumption that wife would be dead, in case if she is not seen for about seven years. For the purpose of the said presumption the law provides that the husband has to approach the Civil Court seeking declaration that his wife is dead. Instead of approaching the Civil Court and obtaining decree, the respondent has presumed that she must have died and had contracted the second marriage, which on the face of it is a misconduct. Under these circumstances, the order of the Tribunal is to be set aside since the reason assigned is contrary to law and fact."

Hon'ble Court considered that the respondent was a pensioner that

"The respondent had retired from service and he is surviving on pension and hence the punishment would affect his livelihood. The Hon'ble Supreme Court has held that interference with the enquiry report and punishment is not for the Courts. Though we are fully cautious on the judgment of the Hon'ble Supreme Court, but in the facts and circumstances of the case that the respondent has already retired from service, and he is surviving only on pension, if it is deprived, it is nothing but deprival of a livelihood of a person. If the punishment was imposed upon the respondent during the period of his service, that would have been a different thing. But since he is already retired, normally, he would be completely dependent upon the pension and if there is a further reduction in the same, it would be difficult for any pensioner to eke his livelihood. Under the circumstance, though we confirm the finding of the enquiry officer and the order of punishment, but the only interference to be is with regard to the reduction of period from five years to three years. Hence, we pass the following:

ORDER

1. The order dated 10th October, 2018 passed in Original Application No.170/00250/2017 by the Central Administrative Tribunal, Bangalore Bench is modified by reducing the period of 50% reduction in pension from five years to three years.
2. As the Respondent has already completed three years, the respondent is entitled for complete pensionary benefits.
3. Time for compliance is two months from the date of receipt of a certified copy of this order. Petition is accordingly disposed of."

(v) In **Pawan Kumar Misra-Vs State of U.P. Thru. Its Prin. Secy. Home Govt. of U.P. & Ors. Special Appeal No. – 570 of 2012**, Hon'ble High Court of Judicature at Allahabad, Lucknow Bench noted that,



"A police constable, has been punished pursuant to disciplinary proceedings, being remarried to another lady without seeking permission of the state government in pursuance to U.P. Government Servants Conduct Rules, 1956 (in short '1956 Rules'). The factum of remarriage by the appellant-petitioner seems to be not disputed. The appellant-petitioner also does not dispute that he has remarried himself in spite of the fact that his first wife survives."

Hon'ble Court observed as under:

"8. Rule 29 of the U.P. Government Servants Conduct Rules, 1956, which deals with service conditions and is relevant for adjudication of the present controversy, is reproduced:-

"Bigamous marriages- (1) No government servant who has a wife living shall contract another marriage without first obtaining the permission of the government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him."

9. A plain reading of Rule 29 reveals that a government servant cannot marry again without permission of the state government. The legislature to their wisdom has used the word "notwithstanding" which means, even if the marriage is permissible under personal law for the time being applicable to a government servant, such government servant cannot be allowed to marry again without permission of the state government.

10. It is settled proposition of law that when the language of the statute is clear and unambiguous, court can not make any addition or subtraction of words vide 2006 (2) SCC 670, Vemareddy Kumaraswami Reddy and another Vs. State of Andhra Pradesh,

11. In AIR 2007 SC 2742, M.C.D. Vs. Keemat Rai Gupta and AIR 2007 SC 2625, Mohan Vs. State of Maharashtra, their Lordship of Hon'ble Supreme Court ruled that Courts should not add or delete the words in statute. Casus Omisus should not be supplied when the language of the statute is clear and unambiguous.

12. In AIR 2008 SC 1797, Karnataka State Financial Corporation Vs. N. Narasimhaiah and others, Hon'ble Supreme Court held that while construing a statute, it can not be extended to a situation not contemplated thereby. Entire statute must be first read as a whole, then section by section, phrase by phrase and word by word. While discharging statutory obligation with regard to take action against a person in a particular manner, that should be done in the same manner. Interpretation of statute should not depend upon contingency but it should be interpreted from its own word and language used.

13. Accordingly, since rule 29 of 1956 Rules does not give any liberty to a government servant to enter into second marriage without permission of the state government, no interpretation other than what is reflected from a plain reading of the provisions contained therein may be given.

And held:

14. We are of the view that the appellant-petitioner cannot take assistance of the provisions contained in Hindu Marriage Act or alike personal law being a government servant. The 1956 Rules has got statutory force and also got overriding effect over the

provisions contained in the statute dealing with personal law and with regard to the quantum of punishment. The only basis for coming to the conclusion that the complaint was made by the wife about the alleged second marriage belatedly, and this is not such a misconduct which warrants compulsory retirement before his superannuation.



(vi) In Union of India and Anr. v. G. Ganayutham (1997 [7] SCC 463), Apex

Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

"The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into or whether irrelevant matters had been taken into account or whether action was not bona fide. The court would also consider whether the decision absurd or perverse. The court would however go into the correctness of the made by the administrator amongst the various alternatives open to. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational \026 in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC 514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."



14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (*supra*) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

19. Keeping the principle emerging from Union of India and another vs. K.G. Soni (*supra*), there appears to be no reason to interfere with the order passed by Hon'ble Single Judge and the disciplinary authority, as held by their Lordships of Hon'ble Supreme Court that the courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court. The department moved ahead to charge the appellant-petitioner in pursuance of complaint submitted by his own first wife and factum of remarriage has not been denied by the appellant-petitioner. Accordingly, the appellant-petitioner has been punished in pursuance to 1956 Rules (*supra*)."

We note that generally, judicial review of any administrative action can be exercised on four grounds viz,

- a) Jurisdictional Error
- b) Irrationality;
- c) Procedural impropriety; and
- d) Proportionality

Having emphatically admitted his marriage with Kajal Karmakar while first marriage with Sushila, (albeit forceful as claimed) was still subsisting, he has been rightly charged of committing a misconduct of and has been penalised for that. In absence of any procedural flaw we are not inclined to interfere with the penalty imposed. However taking a cue from the decisions enumerated *supra*, we remand the matter back to the appropriate authority to decide on the quantum of punishment, so that the penalty is reduced substantially in the light of the above.

Appropriate orders after reconsideration be issued within 4 weeks from the date of receipt of a copy of this order.

No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drb