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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2309/1998  
WITH  
O.A.NO.2310/1998

New Delhi, this the 05<sup>th</sup> day of October, 2001

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Mr. S.A.T. Rizvi, Member (Admn)

QA-2309/1998

Smt. Kaveri Gaur  
Ex-UDC  
673, Shiv Chowk  
Near Ram Temple  
Ram Nagar  
Roorkee-247 667

...Applicant

(By Advocate: Vijay Kumar Mehta)

Versus

1. Union of India  
through Secretary  
Ministry of Defence  
South Block  
New Delhi-110 011.

2. Engineer-in-Chief (HQ)  
Army Headquarters,  
DHQ PO  
New Delhi-110 011.

..Respondents

(By Advocate: Shri V.S.R.Krishna)

QA-2310/1998

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ORDER

By Hon'ble Shri S.A.I. Rizvi, Member (A):-

The applicants in these OAs, one in each, being husband and wife have challenged the respondents' orders dated 7.7.1993 by which they have been dismissed from service. The charge levelled against them is that of bigamy. The respondents have proceeded against both the applicants simultaneously in common proceedings. Similar issues of law and facts have been raised. Accordingly, we have taken up these OAs together for passing this common order.

2. The applicant in OA-2309/98 (Smt. Kaveri Gaur), who is the wife of Shri Ram Niwas Gaur, applicant in OA-2310/98, has challenged besides the aforesaid dismissal order dated 7.7.1993, orders dated 17.10.1997 and dated 30.11.1994 also passed by the respondents. She has also challenged the enquiry report dated 29.11.1986 as well as the memorandum dated 20.1.1986 issued by the respondent-authority by which disciplinary enquiry was initiated against her.

3. Like-wise, Shri Ram Niwas Gaur, applicant in the other OA, has also challenged the very same orders passed by the respondents in his case. Also under challenge from him are the aforesaid enquiry report and the memorandum dated 20.1.1986.

4. Briefly stated the facts of the cases are that Smt. Kaveri Gaur (Ms. Kaveri Shandilya before marriage) was appointed as LDC on 12.2.1974 after she had already

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married Shri Ram Niwas Gaur on 10.3.1973. In 1974, both the applicants were transferred to Roorkee in U.P. Departmental proceedings were initiated against both of them under Rule 14 of the CCS (CCA) Rules, 1965 by levelling the following charges against them:-

"Smt. Kaveri Gaur

That the said Km. Kaveri Shandilya while functioning as LDC during 1974 in HQ UP Area, Bareilly, was ineligible for appointment to the post of LDC owing to the fact that she married to No.6639166A Shri Ram Niwas Gaur, who was already married having his wife, Smt. Wati living, which is contrary to the CCS (Conduct) Rules, 1964.

Shri Ram Niwas Gaur  
Article-I

1. That the said Shri Ram Niwas Gaur, UDC while functioning as LDC during the period 1973 in H.Q., UP Area, Bareilly had committed bigamy by marrying Km. Kaveri Shandilya, resident of 6, Lokhera Lines, Bareilly Cantt. on 10 Mar 73 while having his first wife, Smt. Wati, daughter of Shri Babu Ram Sharma, resident of Village Luhari, Tehsil-Garhmukteshwar, Dist: Ghaziabad (UP) living, which is contrary to the Central Civil Service (Conduct) Rules, 1964.

Article-II

1. That during the aforesaid period and while functioning in the aforesaid office, the said Shri Ram Niwas Gaur, UDC had committed gross misconduct by concealing the facts about his first wife, Smt. Wati, living which is in violation of Central Civil Service (Conduct) Rules, 1964."

5. The inquiry authority appointed in the aforesaid disciplinary proceedings submitted his report on 29.11.1986. At this stage, Smt. Kaveri Gaur moved an OA before this Tribunal (Allahabad Bench) being OA-638/86, inter alia, for quashing the charge-sheet served on her.

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During the pendency of the aforesaid OA, she was dismissed by the Commandant on 9.3.1987. The aforesaid OA was accordingly disposed of on 29.8.1988 as having become infructuous. The respondents were, however, directed by the Tribunal to consider the appeal, if any, to be filed by Smt. Kaveri Gaur against the aforesaid order of dismissal. She had apparently moved the Tribunal in the aforesaid OA even before exhausting the remedy of appeal then available to her. The appeal filed by her was accordingly considered by the appellate authority. However, she was dismissed from service once again by orders passed by the Engineer-in-Chief on 21.10.1989. Aggrieved by the same, she again approached this Tribunal in OA-2488/1990. At the same time, her husband Shri Ram Niwas Gaur, applicant in the other OA, also approached the Tribunal through OA-2492/1990. Both the aforesaid OAs were disposed of by the Tribunal by a common order dated 21.1.1992. Since copies of the inquiry authority's report/finding had not been served on the applicants, the aforesaid orders of dismissal were quashed and set aside with an observation that the respondents were not precluded from holding enquiry in accordance with law from the stage of supply of the inquiry authority's report/finding. An opportunity was also afforded by the Tribunal to both the applicants to represent further in the matter. An opportunity to be heard in person was also granted. Furthermore, the applicants were granted the liberty to advance before the disciplinary authority/appellate authority all the contentions they would like to raise in their defence and the authorities were directed to consider them before passing final

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orders. Accordingly, copies of the report/finding of the inquiry authority were served on the applicants and they proceeded to file detailed representations dated 5.8.1992. After a further consideration of the matter, the respondent-authority (Engineer-in-Chief) again decided to impose the penalty of dismissal on both the applicants by orders passed in both cases on the same date, namely, 7.7.1993. This was followed by several representations filed by both the husband and wife.

6. Shri Ram Niwas Gaur, applicant in OA-2310/98 was appointed as LDC on 7.4.1971 and was posted at Bareilly (UP). He married the aforesaid Ms. Kaveri Shandilya (now Smt. Kaveri Gaur) on 10.3.1973 at the time he was working as a Clerk/LDC at Bareilly (UP). He was thereafter promoted as UDC in 1981.

7. We have heard the learned counsel on either side at length and have perused the material placed on record. The departmental records separately supplied to us on behalf of the respondents have also been perused along with written submissions filed on behalf of the applicants.

8. At the instance of the learned counsel appearing on behalf of the applicants, we have gone through the findings recorded by the inquiry authority and the orders dated 7.7.1993 passed by the disciplinary authority as well. We have done so in order to see if the respondents have followed the prescribed procedure in conducting the disciplinary proceedings. We have noted that due to

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alleged non-cooperation by the applicants, the proceedings had to be carried out ex-parte. We have also noted that documentary evidence can be of prime importance in coming to a conclusion regarding the marriage of the applicants, for the purpose of these proceedings.

9. Insofar as Smt. Kaveri Gaur is concerned, the charge made out against her is that due to Shri Ram Niwas Gaur getting married to her in the life time of his previous spouse, Smt. Wati, she (Kaveri Gaur) was ineligible for appointment to the post of LDC. Such a conduct on the part of Smt. Kaveri Gaur was alleged to be contrary to the CCS (Conduct) Rules, 1964. We find that the respondents have not specified any rule from amongst the CCS (Conduct) Rules, 1964, the breach of which is alleged to have been committed by her. Rule 21 of the aforesaid rules, we find, deals with 'Restriction regarding marriage'. Sub-rule (1) of the aforesaid rule lays down that "No Government servant shall enter into, or contract, a marriage with a person having a spouse living". Shri Kaveri Gaur could possibly be charged for committing the breach of the aforesaid sub-rule inasmuch as Shri Ram Niwas Gaur to whom she has got married was already a married person. In order to find Shri Kaveri Gaur guilty of breach of the aforesaid sub-rule, the respondents are evidently required to prove that she (Kaveri Gaur) was not only a Govt. servant at the material time but was also aware of the subsistence of the earlier marriage of Shri Ram Niwas Gaur at the time she got married to him on 10.3.1973. After going through the report of the inquiry authority and the detailed order

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passed by the respondent-authority on 7.7.1973, we find that the respondents have nowhere even tried to bring home the allegation that Smt. Kaveri Gaur was unmistakably aware of the subsistence of Shri Ram Niwas Gaur's earlier marriage on 10.3.1973 on which date she got married to him. Moreover, at the time of her marriage, she had not entered Govt. service. In this view of the matter, we conclude that Smt. Kaveri Gaur cannot be held to be guilty of committing the breach of the aforesaid sub-rule, which, we find, is the only rule in the CCS (Conduct) Rules, 1964 dealing with bigamy.

10. The respondents having failed to specify the rule which this applicant (Smt. Kaveri Gaur) is alleged to have violated, the only other rule which could be alleged to have been violated by her is the Rule 3 (1)(iii) which requires that "Every Government servant shall at all times do nothing which is unbecoming of a Government servant". We have just seen that Smt. Kaveri Gaur was already a married person when she entered Govt. service in February, 1974. That being the case, she cannot be accused qua a Govt. servant of having contracted marriage with a person having a living spouse. The CCS (Conduct) Rules provide for a declaration to be obtained from new entrants to Govt. service on their ~~marriage~~ status in a prescribed form. The aforesaid declaration form has been reproduced at page 117 of Swamy's compilation of Conduct Rules (27th edition 93B). It can be presumed that a declaration in the aforesaid form was obtained from Smt. Kaveri Gaur also. However, a copy thereof, so important for the purpose of these proceedings has neither been

placed on record nor the same could be found in the departmental record made available to us on behalf of the respondents. On the other hand, we have, in the record supplied by the respondents, come across Smt. Kaveri Gaur's letter to the respondent-authority categorically asserting that to the best of her knowledge Shri Ram Niwas Gaur was an unmarried person when he married her on 10.3.1973.

11. She was married to Shri Ram Niwas Gaur on 10.3.1973 and entered Govt. service on 12.2.1974, i.e., within one year from the date of marriage. From what we have gl<sup>e</sup>anced from the record, we consider it very much likely that Shri Ram Niwas Gaur successfully hid the fact of his earlier marriage from Smt. Kaveri Gaur, at any rate, till he married her in March, 1973 ~~a declaration~~ ~~that she had married a person who had no living spouse.~~ Both the applicants lived in Bareilly when they got married. Shri Ram Niwas Gaur had allegedly contracted a marriage way back in 1962 with Smt. Wati belonging to a village in distt. Ghaziabad. Keeping in view the physical distance as well as long period of over 11 years which had since elapsed, Shri Ram Niwas Gaur is extremely likely to have succeeded in hiding the fact regarding his previous marriage from Smt. Kaveri Gaur. In the absence of tangible and convincing evidence implicating Shrimati Kaveri Gaur, we find it considerably difficult to find fault with her in this matter. After all Shri Ram Niwas Gaur has himself disowned the earlier marriage and is supposed to be fighting out a case in this regard in the High Court. In view of this, Smt. Kaveri Gaur might

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have, during the course of inquiry, averred that Shri Ram Niwas Gaur had not married the aforesaid Smt. Wati. We are not inclined to find fault with Smt. Kaveri Gaur on this account either as it is natural for a woman living in the typically Indian context to try to save her marriage by whatever means available without necessarily coming out with a patent and proven falsehood. Further, since an ex-parte enquiry has been held, even though the same could perhaps be justified in the circumstances, we cannot place much reliance on the sundry observations implicating her indirectly made by the inquiry authority in his report. For the same reason, we do not see any point in taking note, for the purpose of arriving at a decision in this case, of the statement allegedly made by Smt. Kaveri Gaur that Shri Ram Niwas Gaur was incapable of producing a child. The relevance of this statement made by her and also by Shri Ram Niwas Gaur could crop up only in the context of LTC claim preferred by Shri Gaur which included the name of a son <sup>allegedly</sup> born to them in May, 1974. The aforesaid LTC claim has been made by Shri Gaur and not by Smt. Kaveri Gaur. No adverse conclusion can, therefore, be drawn against Smt. Kaveri Gaur on this basis either, more so because, according to her, they had adopted a son.

12. We also find that while in the article of charge served on her, she is alleged to have violated Rule 21 of the CCS (Conduct) Rules, the inquiry authority has, in his findings, relied on Rule 5 (b) of the LDC & Steno-Typist (Defence Service) Recruitment Rules, 1968 which provides as under:-

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"No woman whose marriage is void by reason of the husband having a wife living at the time of such marriage or who has married a person who has a wife living at the time of such marriage, shall be eligible for appointment to any of the said posts."

13. Her ineligibility for being appointed on a post in Govt. would seem to arise from the above provision and not from Rule 21 of the CCS (Conduct) Rules on which reliance has been placed in the article of charge. Since the article of charge did not disclose that the respondents wished to place reliance on the aforesaid Rule 5 (b), the finding arrived at by the inquiry authority by relying on the same, cannot be relied upon for finding the applicant (Smt. Kaveri Gaur) guilty. Clearly, she did not have opportunity to defend herself against the aforesaid charge based on the aforesaid Rule 5 (b).

14. In the aforesaid circumstances, we find that it is not possible to hold Smt. Kaveri Gaur guilty of violation of any of the Conduct Rules insofar as her marriage to Shri Gaur is concerned. As stated, no other adverse conclusion can be drawn against her either. A perusal of the report/finding of the enquiry authority on which reliance has been placed by the disciplinary/appellate authorities, does not bring out anything adverse against Smt. Kaveri Gaur. The enquiry authority has almost through-out the aforesaid report/finding referred to the adverse circumstances found against Shri Ram Niwas Gaur, rather than against Smt. Kaveri Gaur. It is only towards the end of the report/finding that the enquiry authority has made <sup>an un-</sup> ~~an un-~~ successful attempt to find fault with the conduct of Smt. Kaveri Gaur. The sum and substance

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of what has been held out against her is that she has misled the Department deliberately and with malafide intention. We have not been able to persuade ourselves to believe that she has misled the Department intentionally. The charge levelled against her is that of violation of Conduct Rules relating to bigamy. That charge has in any case not been substantiated, insofar as Rule 21 (1) is concerned, for the simple reason that she had not become a Govt. servant at the time she contracted marriage with Shri Ram Niwas Gaur. In the circumstances, we are inclined to hold that the order dated 7.7.1993 passed by the respondent-authority dismissing her from service stands vitiated and the same deserves to be quashed and set aside. The respondents shall reinstate the applicant (Smt. Kaveri Gaur) in service within one month from the date of receipt of a copy of this order. She will be entitled to consequential benefits in accordance with the relevant law and rules for which the respondents shall pass appropriate orders within two months of her reinstatement. We order accordingly.

15. The facts and circumstances in relation to the OA filed by Shri Ram Niwas Gaur are materially different, however. The enquiry into this matter was itself initiated on the basis of a complaint filed by Smt. Wati in August, 1985. The respondents have, on the basis of documentary evidence/investigation supplied by the Superintendent of Police and separately by the Gram Pradhan, concluded that Shri Ram Niwas Gaur had contracted marriage with Smt. Wati in March, 1962 according to Hindu rites and that a daughter named Rajni was born out of the said wed-lock in October, 1969. The respondents have also relied on the ASC records maintained at Bangalore by the record officer. A letter dated 8.11.1982 sent by the

record officer clearly reveals that Shri Ram Niwas Gaur was a married person during the period he served in the Army between 1963 and 1970. Smt. Wati has been shown as his wife whom he had married while in the Army. The record officer had endorsed a copy of the aforesaid letter to Shri Rameshwar Dayal (brother of Smt. Wati) stating therein that the information in question had already been sent to Shri Rameshwar Dayal's sister (Smt. Wati) by a letter dated 21.10.1981. The Gram Pradhan whose report has already been referred to had also forwarded a copy of the pariwar register maintained in normal course as part of village record. Smt. Wati is entered as Smt. Ram Niwas's wife in that register also along with their daughter (Kum. Rajni). Besides, the respondents have also placed on record the decision rendered by the Court of Munsif Magistrate, Hapur in a case under Section 125 of Cr.PC filed by the aforesaid Smt. Wati against Shri Ram Niwas Gaur. A copy of the decision rendered by the Addl. Session Judge, Ghaziabad in the criminal revision filed by Shri Ram Niwas Gaur against the aforesaid decision has also been placed on record. Both these documents clearly bring out that the aforesaid Smt. Wati was the wife of Shri Ram Niwas Gaur. For the purpose of departmental enquiry, the evidence thus brought on record, we find, is sufficient to bring home the charge of bigamy against Shri Ram Niwas Gaur. Having regard to the incontrovertible nature of the evidence placed on record insofar as Shri Ram Niwas Gaur's previous marriage is concerned, we have not considered it necessary to go into the various other issues raised by him in his OA. In the circumstances, we find nothing wrong with the respondents' order finding Shri Gaur guilty of violation of Rule 21 (2) of the CCS (Conduct) Rules, 1964, which provides that "No Government servant having a spouse living, shall enter into, or

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contract, a marriage with any person". Shri Gaur has, insofar as these proceedings are concerned, married Km. Kaveri Shandilya (now Smt. Kaveri Gaur) while Smt. Wati, his previous wife, was still living. In these circumstances, we do not consider it necessary to interfere with the order dated 7.7.1993 passed by the respondents dismissing Shri Ram Niwas Gaur from service. OA No. 2310/98 is accordingly dismissed.

16. The learned counsel appearing on behalf of the applicants has raised the issue of common proceedings by relying on Rule 18 (1) of the CCS (CCA) Rules, which provides as follows:-

"18 (1) - Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

(emphasis supplied)

17. The contention raised by the learned counsel is that the order of the competent authority was not obtained in this case before instituting common proceedings which would, in the circumstances, stand vitiated. We have considered this plea and find that it will not at all affect the common proceedings instituted in the present case. The aforesaid provision, we find, is an enabling provision inasmuch as by making use of it, the competent authority can pass an order for undertaking common proceedings. Whether, in the circumstances of a particular case, he would like to do so or not is a matter

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entirely within his discretion. There is no obligation cast on lower authorities (e.g. Inquiry Authority) to seek the orders of the competent authority before instituting common proceedings. In our view, therefore, no inference can be drawn from the aforesaid provision that without obtaining the orders of the competent authority, the disciplinary /inquiry authority simply cannot institute common proceedings. Likewise, it is not possible to infer therefrom that if common proceedings are instituted in the absence of an order passed by the competent authority, such proceedings will stand vitiated. In the circumstances, we do not find any force in the aforesaid plea, which is hereby rejected.

18. The learned counsel appearing on behalf of the respondents has raised the issue of limitation by contending that the dismissal orders in question were passed way back in July, 1993 and the same cannot be impugned in OAs filed as late as in October, 1998. The abnormal delay that has taken place will, according to him, need to be explained and the Tribunal will have to take a decision in the matter. We have accordingly considered this matter as well. We find that after the applicants were dismissed in July, 1993, they have kept on filing representations one after the other and the respondents had also gone on sending replies. The last reply sent by the respondents is dated 17.10.1997 (Annexure A-1) which is in response to a telegram sent by the applicants, a copy of which has not been placed on record. The matters raised in the aforesaid representations arose from and were connected with the

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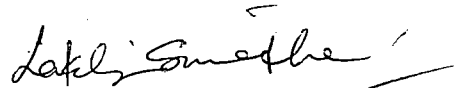
orders of dismissal, one way or the other. The respondents have closed the matter finally on 17.10.1997, and they appear to have done so after a further consideration in the matter. In the circumstances, we are of the view that the respondents have themselves kept the issue of limitation alive all along and at any rate till 17.10.1997. The OAs have thus been filed within time as both the applicants have, inter alia, impugned the decision conveyed by the respondents on 17.10.1997. The issue of limitation is decided accordingly.

19. In the background of the above discussion, we do not consider it necessary to go into the various other issues raised by the learned counsel for the applicants during the course of arguments. The OAs stand decided in terms of what we have held in paragraphs 14 and 15 above. There shall be no order as to costs.

20. Let a copy of this order be placed in other OA, namely, OA-2310/1998.



(S.A.T. RIZVI)  
MEMBER (A)



(MRS. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)

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