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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.1036/96

New Delhi, this the 25th day of February, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, V.C. (J)
- HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Ex. Constable Kaptan Singh, No.1317/NW,
Delhi Police, S/O Sh. Karan Singh, R/O
Village Murthal, Post & Telegraph Office
Murthal, Police Station Sonapat, Distt.
Sonapat, Haryana.

.....Applicant.

(By Advocate: Ms. Vibha Mahajan proxy counsel
for Mrs. Avnish Ahlawat)

VERSUS

1. Union of India, through Lt. Governor
of Delhi, through Commissioner of
Police, Delhi, Police Headquarters,
M.S.O. Building, I.P.Estate, New
Delhi - 110 002.
2. Sh. P.R.S. Barar, Additional
Commissioner of Police (Northern
Range), Delhi Police, Police
Headquarters, M.S.O. Building,
I.P.Estate, New Delhi - 110 002.
3. Sh. Krishan Kumar, Additional Deputy
Commissioner of Police (North West),
Delhi Police, through Police
Headquarters-I, M.S.O. Building,
I.P.Estate, New Delhi - 110 002.

.....Respondents

(By Advocate: Mrs. Meera Chhibber)

O R D E R

By Hon'ble Mr. Justice, V. Rajagopala Reddy, VC (J):-

The order of dismissal of the applicant who is
Constable in Delhi Police, is under challenge in this OA.

2. The applicant was alleged to have committed a
misconduct in that he had married for the second time to
Smt. Laxmi, D/O Sh. Tek Ram though his first wife Smt.
Sudesh, D/O Sh. Balbir Singh was alive in violation of
Rule 21 of C.C.S. (Conduct) Rules, 1964. The applicant
denied the charges. A departmental enquiry was ordered

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and the Enquiry Officer after conducting an elaborate enquiry, drew up his report stating that the charge has not been made out and accordingly he submitted a report to the Disciplinary Authority. The Disciplinary Authority having disagreed with the findings of the Enquiry Officer, sought to make his own enquiry by deputing SI Narain Singh to the native place of the wife of the applicant, who after recording the statement of Sh. Balbir Singh, who has been already examined by the Enquiry Officer, submitted a report to the Disciplinary Authority. The Disciplinary Authority, however, dismissed the applicant from service by an order dated 21.12.92. The applicant thereupon filed an appeal against the order of dismissal. The Appellate Authority set aside the order on the ground that the applicant was neither given any opportunity to cross-examine SI Narain Singh nor afforded any opportunity to make a statement against the report of SI Narain Singh. The Appellate Authority further directed the Disciplinary Authority to hold a fresh enquiry. Accordingly, the statement of Sh. Balbir Singh was furnished to the applicant and the applicant was given opportunity to cross-examine SI Narain Singh. The Disciplinary Authority, after considering the entire evidence, was of the view that the applicant had married Smt. Laxmi and dismissed him from service by the impugned order dated 20.5.94. The appeal as well as revision filed, were rejected by orders dated 22.2.95 and 23.11.95 respectively. The OA is, therefore, filed against the above orders.

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3. Smt. Avnish Ahlawat, learned senior advocate appearing on behalf of the applicant raised before us two points.

i) The status of the parties as husband and wife cannot be decided in a departmental enquiry as any such decision would affect their civil status as well as their matrimonial relationship. Civil Courts are constituted under special laws like the Hindu Marriage Act etc. for the purpose of deciding the civil status as regards the marital relationship which are the only competent Courts but not the Disciplinary Authority under the Service Rules; and

ii) There is absolutely no evidence on record in support of the alleged second marriage of the applicant. Hear-say evidence and conjectures cannot be relied upon to support the charge even in the departmental proceedings.

4. Smt. Meera Chhibber, learned counsel for the respondents vehemently contends that as the scope and nature of proof in the departmental enquiry being entirely distinct and different from that of the proceedings in the Civil or Criminal Courts, as the object in the disciplinary proceedings is only to find whether the Govt. servant has violated the conduct rules or not and as it is not necessary to prove the all the ingredients as to the validity of Hindu marriage to establish the charge of second marriage. The

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Disciplinary Authority is competent to hold such proceedings. It is also contended that there is sufficient evidence on record to find that the applicant had married for the second time. Hence, learned counsel refuted the arguments advanced on behalf of the applicant.

5. We have given careful thought to the arguments advanced on either side and having examined the pleadings thoroughly.

6. The only allegation against the applicant was that he had contracted a second marriage with Smt. Laxmi without divorcing his first wife Smt. Sudesh, in violation of Rule 21 of C.C.S. (Conduct) Rules, 1964 (for short "Rules"). Though there is some scope for an argument that the charge also comprises of the desertion of his first wife, but in view of the fact that the summary of allegation clearly mentioned as having violated Rule 21 of the Rules and that this act constituted the misconduct, We have got little hesitation in rejecting the said argument. Even in the complaint given by PW-1, father of first wife, it was not mentioned that the applicant deserted his daughter. As the Rule which was alleged to have violated, only speaks of a Govt. servant marrying second time without permission of the Department, we are of the view that the only allegation in this case against the applicant is only as regards his second marriage.

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Point No. (i):

Learned counsel for the applicant places strong reliance upon the case of M.S. Mann Vs. Union of India & Ors., 1976 (1) SLR page 350. In that case, a Govt. servant was also alleged to have married second time while his first wife was living. The plea of the Govt. servant was that the previous marriage did not subsist as he obtained divorce in accordance with the customary law. In these circumstances, the Delhi High Court held as under:-

"19. In my opinion the sine qua non of an enquiry on the ground that Rule 21 of the Conduct Rules has been violated is that the government servant concerned contracts a second marriage without permission from the appropriate authorities despite the first marriage or the previous marriage subsisting. If such a situation is admitted to exist Rule 21 is obviously violated. But if the plea is that the previous marriage does not subsist then the enquiry cannot proceed without a competent finding as to the subsistence of the previous marriage. The Enquiry Officer would have no jurisdiction to go into matters which affect civil rights. The only situation in which an enquiry as to the violation of Rule 21 can proceed departmentally or in what are called disciplinary proceedings are:-

- (a) Where subsistence of the first marriage is admitted;
- (b) Where subsistence of the first marriage can be established without entering into complicated questions of law and fact;
- (c) Where a Court of competent jurisdiction has held that the previous marriage subsists; and
- (d) The dissolution of the previous marriage alleged by the officer/ official charged with violation of Rule 21 can on the very face of it be held to be a false plea.

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In all circumstances an enquiry as to the subsistence or dissolution of a previous marriage would so adversely affect civil rights of parties....."

7. In Hardwar Prasad Vs. Union of India & Others, 1994 (4) SLR page 247, the C.A.T., Calcutta Bench has taken the view that if any legal proceeding is pending in a court of law, it would not be correct for Government to take action against the Govt. servant on the ground that the Govt. servant was not looking after his wife and children and was not maintaining the family. Such action might be construed by the court to amount to contempt.

8. The above two decisions cited by the learned counsel appear to support the plea of the applicant. Learned counsel for the respondents on the other hand relies upon the judgement in the case of State of W.B. & Others Vs. Prasenjit Dutta, (1994) 2 SCC page 37 in support of her plea that the view taken in the above cases is not the correct law. In that case also the Govt. servant was alleged to have married during subsistence of first marriage. In the departmental proceedings an order of dismissal was passed by the Disciplinary Authority for violation of Rule 5 (4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980, the Govt. The Govt. servant approached the High Court and the High Court stayed the operation of the order of dismissal and the same was upheld by the Division Bench. When the matter was carried to the Hon'ble Supreme Court, the learned Judges have taken a view that:-

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"5. The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a matrimonial or a civil court. I cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of sub-rule (4) of Rule 5 of the aforesaid Rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the Rule till after a proper adjudication is made by the civil or matrimonial court....."

9. Again in the case of Union of India & Another Vs. - Special Land Acquisition Officer & Others, (1996) 6 SCC page 454, the Hon'ble Supreme Court has held that even after an acquittal by the Criminal Court on the charge of bigamy was not a bar to hold departmental enquiry for contracting the second marriage without permission of the Govt. The Court held that the scope and nature of the enquiry in both proceedings, was entirely different. The Hon'ble Supreme Court, again in State of Rajasthan Vs. B.K.Meena & Others, (1996) 6 SCC 417, held that there was no legal bar to proceed with the departmental proceedings on the identical charge though, the Govt. servant was also being prosecuted on the identical charge on the ground that the ingredients of misconduct in the departmental proceedings and the quantum of proof, was different. Moreover, the approach and objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question would be whether the Govt. servant was guilty of such a conduct as to the marriage and could be removed from

CAJ

(8)

service whereas in the criminal proceedings, the question was whether the offence registered against him under the concerned enactment, is established. The mode of enquiry and rules governing the enquiry in both the cases are different.

10. Thus, it is clear what has sought to be proved against the Govt. servant in a departmental enquiry, was whether he had violated the Conduct Rules in marrying second time during the subsistence of his first marriage, without the permission of the Govt. In order to consider either to continue the Govt. servant or to impose a suitable punishment against him, the departmental authorities are not deciding any question as to the status of the parties of the marriage. The orders passed in the departmental proceedings will not affect the civil status of such persons. In the instant case, it has also to be noticed that there are no proceedings in the civil courts as to second marriage against the applicant.

11. Thus, we have to hold that even pending the civil proceedings between the applicant and his first wife, it is competent to the Disciplinary Authority to take disciplinary proceedings and pass the impugned order. The impugned order is, therefore, not vitiated on this ground.

Point No. (ii):-

It is seriously contended by the learned counsel for the applicant that there is no evidence in this case to support the charge. As seen Supra, the

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Enquiry Officer has examined PWS 1 to 6 and DWS 1 to 8 and considered their evidence elaborately. He analysed the evidence carefully and found that "there is no evidence to substantiate the allegations". He finally concluded that "the charge levelled against the applicant could not be proved". The Disciplinary Authority, however, disagreed with the findings. The reasons for disagreement which were found at para 25 of the note sheet of the Disciplinary Authority are extracted as under:-

"I disagree with the finding of the E.O. I have gone through the statements of PWS/DWS. On both sides there is no satisfactory reply to the query whether the delinquent married second time or not. It is also not clear that if the intention of delinquent is clear then why he is not bringing his wife. Secondly it is not understood that why the first wife remained away from her husband for so long. Though there is no strong evidence to prove the allegations or the defence but it seems that this Const. is neglecting his wife knowingly and intentionally which is also unbecoming of a Govt. servant."

12. Thus, the Disciplinary Authority also found that there was no satisfactory evidence regarding second marriage. He only wondered why the first wife remained away from her husband for so long. He, therefore, inferred that the applicant was neglecting his wife which was unbecoming of a Govt. servant. Significantly, we do not find any disagreement with the findings of the Enquiry Officer. In fact, he concurred with his findings but he was of the view that the applicant has been neglecting his wife. It should be noted that this allegation is not a part of the charge. The applicant

CAJ

(10)

was not accused of this charge nor any evidence was led on this charge. In fact, even on this allegation, there is no evidence, except the conjectures and an inference made by the Disciplinary Authority.

13. The Disciplinary Authority, however, as seen in the impugned order of dismissal, tried to collect evidence, if any, on his own. He, therefore, deputed SI Narain Singh, who had obtained only the statement of Sh. Balbir Singh, the father of the applicant's wife, who had already been examined as PW-1 in the case by the Enquiry Officer. The only reason, the Disciplinary Authority, has assigned in support of his order, has given, was that the question of Smt. Laxmi's marriage with the applicant was discussed in the village Panchayat on 22.3.92 which has been deposed to by PW-4. But, the Disciplinary Authority having considered the evidence of PW-4 and all other PWs stated in the note of disagreement to the effect that the evidence brought on records by the Enquiry Officer, was not satisfactory and not sufficient to prove the charge against the applicant. A close reading of the impugned order of the Disciplinary Authority would convey the impression that he was determined, no matter what the evidence is, to penalise the applicant. His mere conclusion that there was evidence in support of the charge, cannot be accepted unless the conclusions are preceded by reasons or by any evidence. In the instant case, the attitude of the Disciplinary Authority appears wholly inconsistent and wholly incomprehensible as he had come to a conclusion without there being not a trace of evidence in support of

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(11)

his conclusion. He retracted from his own conclusions made earlier, after considering the Enquiry Officer's report. This is not a case where the Disciplinary Authority gathered any further evidence after the Enquiry Officer submitted his report. If that were so, he can change his mind on the basis of such evidence. But, here, SI Narain Singh had obtained the statement of Sh. Balbir Singh PW-1 and who did not see anything further, then what he deposed to before the Enquiry Officer as PW-1. Thus, no additional evidence was collected by the Disciplinary Authority.

14. A casual cursory glance of the evidence recorded by the Enquiry Officer would be sufficient to hold that this is a case of no evidence. PW-1 is the father of the first wife, only stated in the chief examination that the applicant married for the second time to Smt. Laxmi Devi. In the cross-examination, he stated that he had not witnessed the second marriage being solemnised and that he came to know about this. He was not got either any invitation card or any other documents in support of the second marriage. PW-2, applicant's wife, states that she came to know that the applicant got married to Smt. Laxmi. She also stated that she had not witnessed the second marriage. No document was filed to prove the same. PW-3 is not a witness to this. SI Narain Singh states that the applicant married second time. He also stated that people orally told him about two years ago. PW-4, Pradhan states that the applicant was residing with a lady, his second wife. These are the main witnesses in

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the case and this is all the evidence in support of the prosecution case, whereas the applicant examined DW-1, Smt. Laxmi Devi who says that he married with Naresh Kumar DW-4 and that she did not know the applicant. DW-2 her father himself stated that his daughter was married to DW-4 Naresh Kumar. DW-4 Naresh Kumar, husband of Smt. Laxmi stated that he was married to Smt. Laxmi and his wife was to deliver his baby in one or two days and that he has been living with her. Discussing her evidence, the Enquiry Officer stated that there was no evidence. The Disciplinary Authority himself has stated in his so-called note of disagreement, that there was no evidence on the charge of second marriage. Surprisingly, now, he states, without showing any other evidence on record, that the applicant married second time. We are of the firm view that the conclusions of the OA are wholly arbitrary and unsustainable. We are aware of our limited jurisdiction in the disciplinary proceedings and learned counsel for the respondents also contends that we cannot appreciate or consider whether the evidence is sufficient to justify the conclusions of the Enquiry Officer or the Disciplinary Authority, as we are not a Court of appeal. But at the same time, are we not entitled to go into the question whether there was any evidence whatsoever in the case. Upon the scrutiny of the record, we find that we may interfere with the order. In the case of Yoginath D. Bagde Vs. State of Maharashtra & Another, the Hon'ble Supreme Court has held as under:-

".....The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person

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would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep Singh Vs. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad Vs. State of Bihar, State of Andhra Pradesh Vs. Rama Rao, Central Bank of India Ltd. Vs. Prakash Chand Jain, Bharat Iron Works Vs. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra Vs. Delhi Administration laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well as the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

15. In the instant case, we have found that the findings of the Disciplinary Authority were not supported by any reasons or evidence and we are of the view that they could not have reached by an ordinary prudent man. He has gone by the surmises and conjectures. The rumours floated in the village which was prompted a Panchayat without even taking any decision in the Panchayat, cannot be a basis to hold that the applicant married second time. The learned counsel for the respondents seeks to rely upon the order of the Appellate Authority and that the reasons and conclusions given by him, cannot be interfered by this Tribunal. It should be noticed that the Appellate Authority cannot improve upon the evidence on record. He also committed the same error as the Disciplinary Authority, relying upon the hear-say evidence without looking into the earlier disagreement

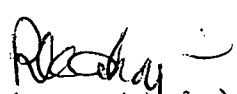
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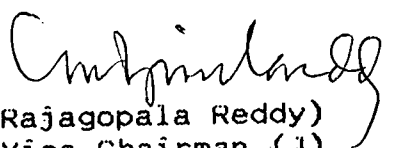
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note of the Disciplinary Authority. We are constrained to hold that this is a case of no evidence.

16. In view of the aforesaid circumstances, the impugned order is quashed. The respondents are directed to reinstate the applicant in service within two months from the date of receipt of a copy of this order. We, however order, in view of the facts and circumstances of the case, to pay the applicant 50% of the back-wages. Other benefits of seniority etc. shall be allowed to him.

17. The OA is accordingly allowed. No order as to costs.


(R.K. Ahobja)
Member (A)


(V. Rajagopala Reddy)
Vice Chairman (J)

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