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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1324/89

New Delhi this 25th Day of March 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

Shri. Ashwani Kumar,  
Son of Shri Madan Lal,  
Ex C & W Khalasi,  
under Carriage and Wagon Superintendent  
Northern Tugalkabad,  
New Delhi.

.... Applicant

(By Advocate : Shri D.P. Gupta)

Versus

Union of India through  
General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

... Respondents

(By Advocate : Shyam Moorjani)

O R D E R (Oral)

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was carriage and Wagon permanent Khalasi who was removed from service on the charge of second wife while the first wife was living. He was served with a memo of chargesheet dated April 1984 alongwith the article of charge, imputation of misconduct, List of relied upon documents and list of witnesses. The applicant pleaded not guilty to the charge and submitted a defence statement dated 22.5.1984. AME (IV) was appointed as Inquiry Officer. The Inquiry proceeded under the Disciplinary and Appeal Rule 1968, E.O., examined the witnesses of the prosecution and those produced by the charged employee and gave the

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findings that Ashwani Kumar has been guilty of having conducted second marriage with Asha on 13.4.1982. The first wife Veena had divorced him and the second wife has also divorced him. Shri Ashwani Kumar has been found guilty of violating Rule 21 of the Railway Service (Conduct) Rule 1966. The Disciplinary Authority by its order dated 28.5.1986 issued by the AME (C&W) whereby an order of removal was passed accepting the findings of the Inquiry Officer. The applicant preferred an appeal which was rejected by the DME by its order dated 3.3.1987. His further representation was also rejected by DRM by the order 24.8.1987. The applicant has also filed O.A. No. 1236/88 before the Principal Bench which was decided by the order dated 8.7.1988 whereby the case was remanded to the Appellate Authority to dispose of the appeal by a speaking order. The Appellate authority again by the order dated 28.1.1989 rejected the appeal. Aggrieved by the same the applicant filed the present application in July 1989. He has prayed for quashing of the impugned orders referred to above, and that the applicant be directed to continue in service with all benefits.

2. The respondents contested the application and in the reply stated that the applicant has committed breach of Rule 21 of the Railway Service Conduct Rule 1966 in entering into second marriage during the life time of the existing first wife. It is further stated that the first wife Smt. Veena filed an objection for divorce before the District Judge, Sonapat and the District Judge by the Order dated 24.9.1985 granted the decree of divorce, on the ground of desertion on account of having married second time with Smt. Asha Rani. The applicant was given due opportunity of meeting his defence before the Inquiry Officer who have discussed the evidence

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brought before him and submitted his report giving the findings that the applicant has married a second wife Smt. Asha during the life time of the first wife Smt. Veena. The Disciplinary Authority, the Appellate Authority and the D.R.M. have considered the representation/appeal of the applicant and upheld the findings of the Inquiry Officer as well as the punishment of removal from service. The applicant has no case. The applicant has also filed the rejoinder.

3. We have heard the learned counsel at length and perused the record. The learned counsel for the applicant argued that the alleged divorce decree passed by the District Judge, Sonapat is much after the date of issue of the chargesheet. The Appellate Authority has wrongly considered the same in the impugned order. We have considered this. What is material in this case is the alleged date of marriage which is 13.4.1982 of the applicant with Smt. Asha Rani. The judgement of the District Judge, Sonapat has given a boost to the moral conscience of the Appellate Authority agreeing with the order of the Disciplinary Authority.

4. The second contention raised by the learned counsel is that the judgement refers to in Annexure III of the Memo of chargesheet of April 1984 are of a period of 1982. These judgements are not considered by the Inquiry Officer while giving his findings against the applicant. If a document has been mentioned but not considered finally that in no way prejudices the case of the aggrieved persons.

5. The learned counsel further argued that the defence produced before the Inquiry Officer was also of one real sister Smt. Radha of the alleged second wife Smt. Asha Rani and she was married on 13.4.1982. In

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her statement before the Inquiry Officer she has categorically stated that on that day there was only ceremony of marriage with the younger brother of Shri Ashwani Kumar and no marriage of Smt. Asha Rani gone through on that day with Ashwani Kumar. The contention of the learned counsel, therefore, is that the Inquiry Officer has reached an erroneous conclusion in ignoring this part of the testimony of the defence witnesses. On the face of it the contention of the learned counsel may be plausible but on scrutiny it appears that it needs courage, alertness, boldness and the risk to the life if a person gives and deposes either before a Tribunal or before the Inquiry Officer. Cases are not ~~near~~ where witnesses are produced on either side to defeat a right fact otherwise duly deducible from documents. When we go through the statement of Smt. Abha the alleged second wife of the applicant as well as the mother-in-law Smt. Shanti of the applicant who is the mother of Smt. Asha, the conclusion of their statement drawn by the Inquiry Officer cannot be said to be erroneous or perverse. Even the defence witness Smt. Radha has admitted that a photograph of Ashwani Kumar was also taken alongwith Smt. Asha and she qualified this statement by saying that it was under a 'Joke'. In this part of the country and the society the applicant belongs there is ~~oriental~~ <sup>oriental</sup> cultural not affected by ~~Swider~~ <sup>Swider</sup> occidental cultural. Even if the statement of Smt. Radha is to be taken into account then the Inquiry Officer has placed more reliance on the statement of the victim Smt. Asha as well as Smt. Shanti and this Tribunal cannot sit as an Appellate Authority to reappraise the evidence and draw another conclusion than arrived at by the Inquiry Officer. Thus, we do not find that

statement of defence witness Smt. Radha has not been rightly appreciated by the Inquiry Officer. Regarding the other defence witness ~~who are said~~ to have presided over the function of ceremony i.e. Panditji he has stated that he has celebrated only one marriage and not two marriages. That statement also again given a teeth below to the statement of Smt. Asha and her mother. Smt. Asha has clearly stated that she entered into the metrimonial ~~or matrimonial~~ alliance with Ashwani Kumar according to Hindu rites on 13.4.1982. Smt. Shanti her mother, has also stated that she learned that Asha and Ashwani have married. Earlier to this there appears to be a first information report lodged by Smt. Shanti against Ashwani Kumar for abduction of her daughter Smt. Asha. All these statements speak for themselves and the ~~facts and~~ reasons given by the Inquiry Officer <sup>in the findings</sup> cannot be faulted with.

6. The learned counsel has also argued that the order given by the Appellate Authority on 20.8.1989 is not a speaking order though specific directions have been issued in the order dated 7.7.1988. The charge in this case was of having another wife during the life time of first wife. This fact has been considered and the Appellate Authority has upheld the findings of the disciplinary authority. In addition the Appellate Authority has also considered the subsequent event i.e. the judgement by the District Judge, Sonapat in September 1985. It goes to show that he has applied thoroughly his mind to the case in hand. In view of this we find no merit in this case and the same is dismissed. Costs on parties.

(B.K. Singh)  
Member (A)

(J.P. Sharma)  
Member (J)