

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.213/2020

This the 10th day of December, 2020

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)



Pankaj Kumar Chaudhary S/o Shri S. S. Chaudhary,
Aged about 42 years, R/o 2/3, Gandhi Nagar,
Bajaj Nagar Marg, Jaipur-302015 (Raj.),
Earlier working as S.P. (SCRB)
Police Headquarters, Jaipur.

... Applicant

(By Mr. K. Sudhakar Reddy with Mr. Shashank Singh,
Advocates)

Versus

1. Union of India through its Secretary
Ministry of Home, North Block,
New Delhi-110001.
2. Union Public Service Commission through
Chairman, Dholpur House,
New Delhi-110001.
3. State of Rajasthan through its Sercetary,
Department of Personnel,
Government Secretariat,
Jaipur-302005 (Raj.).
4. Secretary, State of Rajasthan,
Department of Home,
Government Secretariat,
Jaipur-302005 (Raj.)

... Respondents

(By Mr. R. V. Sinha for UPSC; Mr. Gyanendra Singh for
Respondent No.3; and Mr. Vishal Meghwal for Respondent
No.4, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :



The applicant is an IPS officer of 2009 batch, of Rajasthan Cadre. Before being selected into IPS, he worked as an Auditor in the Ministry of Commerce. A charge memo was issued to him on 26.04.2016 under Rule 8 of All India Service (Disciplinary & Appeal) Rules, 1969. The allegation against the applicant was that though he was married one Ms. Sudha Gupta on 04.12.2005, he started living with another woman and had a son through the other woman. It was alleged that the applicant filed a divorce application before the Civil Court and even before any decree of divorce was granted by the competent court, he contracted another marriage. The disciplinary authority stated that the acts of the applicant constitute amount to misconduct in terms of Rule 3 (1) of the AIS (Conduct) Rules, 1968.

2. The applicant submitted his explanation dated 18.10.2016 denying the charge. He admitted that he married Ms. Sudha Gupta in 2005. However, he stated that when Ms. Sudha Gupta refused to live with him and in fact intended to contract another marriage, he filed application No.727/2009 before the Family Court, Varanasi under Section 13 of the



Hindu Marriage Act, and when it was dismissed on 21.03.2020, he filed an appeal before the Hon'ble Allahabad High Court, and the same was pending at that time. He further stated that the Allahabad High Court allowed the appeal on 01.05.2018 and granted the decree of divorce. The DA appointed an inquiry officer on 25.01.2017. After conducting inquiry, the inquiry officer submitted a report on 14.07.2017, holding the charge against the applicant as proved. A copy of the same was made available to the applicant. After receiving the representation of the applicant, the DA forwarded the entire record to the UPSC for their advice on the quantum of major penalty. It is stated that the UPSC advised the DA vide their letter dated 05.11.2018 to impose penalty of dismissal from service. A copy of the advice was furnished to the applicant and he submitted his representation on 16.01.2019. Taking the same into account, the DA passed an order on 19.02.2019 dismissing the applicant from service. The applicant filed this OA challenging the order of punishment.

3. The applicant contends that there was family dispute between himself and Smt. Sudha Gupta even by the time when he was selected to IPS, and a petition was filed by him in the Family Court, for divorce. He contends that at a



time when the appeal was pending before the Hon'ble High Court, Smt. Sudha Gupta filed a complaint against him and though a preliminary inquiry was conducted, the report thereof was not made available to him. He contends that in several cases, the Hon'ble High Court held that initiation of disciplinary proceedings solely on the basis of the family dispute of an officer is untenable and despite that the charge memo was issued. The applicant has also stated that the inquiry officer appointed in his case was facing serious charges of corruption and despite repeated requests for change, the inquiry officer was not changed. He further stated that the IO travelled beyond the scope of the charge in the disciplinary inquiry, and has undertaken discussion as though he is the court of law. According to the applicant, the IO was highly prejudiced against him and recorded a finding, though there was no evidence against him.

4. The applicant contends that Smt. Sudha Gupta was pressuring him only for payment of huge amounts and ultimately the Hon'ble High Court of Allahabad granted decree of divorce on 01.05.2018 and though this was mentioned by him at various stages, the extreme penalty of dismissal was imposed.



5. The respondents filed a detailed counter affidavit. According to them the charge sheet was issued to the applicant in view of the complaint received from his wife Smt. Sudha Gupta and an inquiry was held in accordance with the prescribed procedure. They contend that as an IPS Officer, the applicant was required to maintain utmost discipline even in his family life, and living with another woman, even while his marriage was subsisting, constitutes an act of misconduct, and that the punishment was imposed accordingly.

6. We heard Sh. K. Sudhakar Reddy with Sh. Shashank Singh, learned counsel for the applicant, Sh. R. V. Sinha, learned counsel for UPSC and Sh. Gyanendra Singh and Sh. Vishal Meghwal, learned counsel for respondents 3 and 4.

7. The only charge framed against the applicant in the charge memo reads as follows :-

“That you Pankaj Kumar Chaudhary, IPS, solemnized marriage with Smt. Sudha Gupta on 04.12.2005 at District Varanasi, Uttar Pradesh. From your matrimonial relationship with Smt. Sudha Gupta, a daughter Suchi was born in the year 2008. After being selected in Indian Police Service in May, 2009, you maintained distance from Smt. Sudha Gupta and filed petition for divorce no.727/2009 dated 06.10.2009 before Family Court, Varanasi. The said petition was dismissed by the Court vide judgment dated 21.12.2013.

Even before the said judgment dated 21.12.2013 being passed by the Hon'ble Family court you established relationship with Mukulika daughter of Shashi Dutta. From the relationship between you and

Mukulika a son was born on 14.05.2011 at Santokba Durlabhji Memorial Hospital, Kanpur. Thus, despite being married and before taking divorce properly from first wife Smt. Sudha Gupta it is found that you made relationship with other woman as wife and produced child. Such conduct of yours violates Rule 3(1) of All India Services (Conduct) Rules, 1968 and thus falls within the category of serious misconduct for which you are accountable. As details mentioned in details of charge sheet."



8. It was only in relation to the matrimonial issue of the applicant. By the time the charge memo was issued, an appeal preferred by the applicant before the Hon'ble Allahabad High Court, feeling aggrieved by the dismissal of the divorce petition by the Family Court, was pending. The explanation offered by the applicant was not found satisfactory by the DA and accordingly an IO was appointed. The Tribunal does not act as an appellate authority on the findings recorded by the IO. However it can certainly verify whether any serious lapses have taken place in the process of conducting inquiry.

9. The applicant raised repeated objections to the very appointment of the IO against him. He stated that the IO appointed against him was himself facing charges of corruption and that he cannot expect fair treatment in his hands. In the OA also he raised this plea in para.4.22 which reads as under :

"That the applicant submitted representation to the respondents for changing the IO. The prayer was

made as the IO integrity was doubtful. Prayer made by the applicant was not considered by the respondents."

10. In their reply, the 1st respondent did not deal with this plea at all. The respondents 3 and 4 stated that the representation in his behalf was made after the report was submitted. In para 4.16, the applicant pleaded as under :-



"That the respondents appointed Shri Ravi Shankar Srivastava as Inquiry Officer. The integrity of Shri Srivastava was doubtful. He himself was charge sheeted by the State Government for various misconducts. Against him departmental enquiries were pending. The applicant therefore writes letters to the Disciplinary Authority seeking prayer that the Inquiry Officer may be changed. In his communication to the Chief Secretary he stated that Shri Srivastava while serving as Director in the State Medical & Health Department is accused of fraud. He apprehended that probe could hardly be faire given the back ground of the investigator."

The reply of respondents 3 and 4 to the plea raised above, reads as under :

"That the contents of para No.16 of the Original Application are denied. The applicant cannot be permitted to raise any objection with regard to integrity of inquiry officer. It is submitted that applicant cannot be permitted to take shelter of conduct of inquiry officer without any basis. It is also submitted that in absence of impleadment of inquiry officer in the memo of petition no allegation of malafide can be attributed. Moreover the applicant has been given proper opportunity of hearing by the inquiry officer as

provided in the All India Service (Discipline and Appeal) Rules, 1969.

From the above it is evident that the respondents did not deny that the IO was facing the allegations of lack of integrity.



11. We have perused the report of the IO. The method of discussion undertaken by him is somewhat extraordinary. A major part thereof was devoted to the interpretation of the word 'integrity', etc. It smacks of a judgment of a Tribunal or a High Court in that it has taken into account various precedents by extracting certain paragraphs of the judgments. It was not even mentioned that the Presenting Officer has argued all those aspects. The IO has imported all his personal knowledge on the subject into the report. The function of an IO is to take into account, the evidence before him and to record a finding as to whether the charge against the delinquent official is proved or not. There does not exist any scope for importing his knowledge or acumen into the report. To certain extent, we are convinced that the apprehension of the applicant vis-à-vis the impartial attitude of the IO was not without basis.

12. Assuming that there was lapse on the part of the applicant in having live-in relation with another woman, that too when there existed his legally married wife, two factors were required to be taken into account by the DA. The first is



that the Hon'ble High Court of Allahabad granted the decree of divorce in favour of the applicant on 01.05.2018. The second is that the Hon'ble Supreme Court, in *Joseph Shine v Union of India* [WP (Crl.) No.194/2017, decided on 24.09.2017], has decriminalized the offence which was otherwise punishable under Section 377 IPC. We are of the view that if these two factors are taken into account, the imposition of punishment of dismissal against the IPS officer with a decade of otherwise unblemished service becomes a bit untenable. Though there exists some legal and factual basis, to interfere with the report of the IO and other consequential steps, we are of the view that the matter can be given a quietus by requiring the DA to impose punishment against the applicant, which shall be other than the one of dismissal from service.

13. We, therefore, partly allow the OA setting aside the order of punishment only in the limited context of requiring the DA to pass an order, imposing against the applicant, any penalty other than the one of dismissal or removal from service. The exercise in this behalf shall be completed within three months from the date of receipt of a copy of this order. The applicant shall be reinstated into service forthwith, but he shall not be entitled to any arrears of pay. The manner, in which the

period between the date of the impugned order and the date of reinstatement of the applicant into service is to be regulated, shall be decided by the concerned authority. There shall be no order as to costs.



(A.K.BISHNOI)
MEMBER (A)

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

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