

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/795/2019

Reserved on:30.09.2020

Pronounced on:07-12-2020

(Through Video Conferencing)

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

R.Srinivasan, Age 52+ years,
Group-A, Under Secretary,
S/o Late Sh.B.S.Ranga Chari,
R/o KG-II 453 Vikas Puri,
Nw Delhi-110 018.

....Applicant

(Through Shri Abhinav S Raghuvansh, Advocate)

Versus

1. Union of India
Through the Foreign Secretary
M/o External Affairs,
New Delhi.
2. Joint Secretary, CNV, M/o External Affairs,
New Delhi.
3. The Secretary, UPSC,
Dholpur House, Shahjahan Road,
New Delhi-110 069. Respondents

(Through Shri Ranjan Tyagi, Advocate)

: ORDER:

Justice L. Narasimha Reddy, Chairman

The applicant is a Group-A officer in the Ministry of External Affairs, Government of India. In the year 2017, he was working as Consulate in the Consulate General of India at Atlanta. The Chief Vigilance Officer (CVO) of the Ministry issued office memorandum dated 23.08.2017 to the applicant stating that it was brought to their notice that he had engaged in adulterous relationship with one Ms.Kamalika Bhattacharya, a former employee of Consulate General of India at Atlanta, and that he made a false promise of marrying her and forced her to abort her child on two occasions. It was pointed out that the acts of the applicant displayed moral turpitude and that he has conducted himself in a way, unbecoming of a Government servant. The applicant submitted his explanation on 19.09.2017. He admitted that he had extra-marital relationship with the woman referred to above. Another allegation against the applicant was that he developed business relations with one Shri Jitu Bhagwanji. He denied the allegation as to business relations with the said person.

2. The disciplinary authority issued a minor penalty charge memorandum dated 05.12.2017 to the applicant under Rule 16 of the CCS (CCA) Rules, 1965. In the statement of imputations, the details allegations made against the applicant are furnished. Reference was made to the memo dated 23.08.2017 issued by the CVO and the reply submitted by the

applicant. The applicant requested the disciplinary authority to furnish a copy of the complaint received in the Ministry, and that is said to have been denied. Ultimately, he submitted an explanation on 12.02.2018 admitting most of the allegations. The only denial was about the one as to the parent of the aborted ones.

3. The disciplinary authority arrived at a tentative conclusion that the applicant is guilty of the misconduct, unbecoming of a Government servant under Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964, and referred the matter to the UPSC. After undertaking a detailed discussion, the UPSC came to the conclusion that the applicant is guilty of displaying willful conduct of reprehensible moral turpitude, and is guilty of grave misconduct, unbecoming of a Government servant. It suggested a punishment of reduction to a lower stage in the time scale of pay by one stage, for a period of three years, without cumulative effect and not adversely affecting the pension. A copy of the advice of the UPSC was furnished to the applicant and on consideration of the representation dated 23.10.2018 submitted by the applicant, the disciplinary authority passed an order dated 19.12.2018, imposing the punishment of reduction to the lower stage in the time scale of pay by one stage for a period of three years, without cumulative effect and not adversely affecting the pension.

4. This OA is filed challenging the notice dated 23.08.2017 issued by the CVO, the memorandum of charge dated 05.12.2017, the advice of the UPSC dated 04.09.2018, and order of punishment dated 19.12.2018. UPSC.

5. The applicant contends that the relationship between himself and Ms.Bhattacharyya was wholly consensual in nature and it cannot be said that he indulged in adulterous relationship. He further contends that the said lady was fully aware of the fact that he was married and both of them developed admiration towards each other. However, he denied that the relationship has resulted in pregnancy of the woman. According to him, he rendered assistance to her to break the pregnancy and on that account it cannot be said that he owned up the cause of the pregnancy.

6. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Joseph Shine Vs. Union of India*** (AIR 2018 SC 4898), he contends that once the Hon'ble Supreme Court has held Section 497 of IPC as unconstitutional and struck it down, the acts attributed to him, cannot be treated as misconduct.

7. On behalf of the respondents, a reply is filed. According to them, the applicant has admitted that he indulged in sexual relationship with another married woman, who was also an employee in the Consulate and it is clear case of moral turpitude and constitutes an act, unbecoming of a public servant. It is stated that the prescribed procedure had been followed throughout, duly giving opportunity to the applicant at every stage and the punishment was imposed, proportionate to the acts admitted by the applicant himself.

8. Shri Abhinav S Raghuvanshi, learned counsel for the Applicant argued on the same lines, as pleaded in the OA. He elaborated on the

impact of the judgment of the Hon'ble Supreme Court in **Josephian Shine's** case and took exception to the order of punishment passed against the applicant.

9. Shri Ranjan Tyagi, learned counsel for the Respondents, on the other hand, submitted that the acts of misconduct amounting to highly unbecoming of a public servant, resorted to by the applicant, are impermissible in law and have also brought disrepute to the entire organization. He submits that the UPSC had also examined the matter in detail and tendered its advice, which in turn was accepted by the disciplinary authority.

10. Rarely, we come across the cases of this nature. Even where the persons facing the allegation of moral turpitude or acts unbecoming of a public servant are made in the disciplinary proceedings, the public servants facing such allegations try to deny them and make effort to prove their innocence. In the case on hand, we find that the applicant has owned up the acts attributed to him. At the same time, his effort is to justify them and thereby, to extricate himself from the consequences.

11. One of the strong pillars of the Indian culture, spread over thousands of years, is the sanctity of marriage. It used to be such that other civilizations felt the deficiency on account of the absence of such a strong institution of marriage. The culture, withstood the onslaughts on the country from time to time. However, in the recent past, experiments on it are started by certain brilliant

social Scientists. While such experiments brought fame to them, they have correspondingly weakened the institution of marriage. The nods given by the Courts to some of the trends encouraged them to proceed with the added vigor. Phenomena like the addition of new grounds for divorce, recognition of living in relationship, are the byproducts.

12. The applicant seems to have contemplated well in advance that the Hon'ble Supreme Court is going to decriminalize the acts of adultery and freely indulged in them. It was a coincidence that the judgment of the Hon'ble Supreme Court came at a time when the disciplinary proceedings against him were pending.

13. The applicant was issued a memorandum dated 23.08.2017 by the CVO of the Ministry, alleging that he has engaged in adulterous relationship with one Ms.Kamalika Bhattacharya, a former employee of Consulate General of India at Atlanta, and that he made a false promise of marrying her and forced her to abort her child on two occasions. He was required to explain. In reply dated 19.09.2017, the applicant stated inter alia in paras 4 and 5 as under:

“4. Sir, the first allegation is that I had. indulged in an 'adulterous' relationship with one Ms.Kamalika Bhattacharyya during my tenure at Atlanta. Sir, the full facts and the TRUTH about the whole episode have already been clarified, in detail, in my letter/statement. A copy of the same is attached herewith for ready reference. In the light of the position as detailed/brought out therein, I believe there remains nothing else that I need to explain. I once again reiterate that the relationship between Ms. Bhattacharyya and myself was wholly consensual and that I have never coerced her or forced her into the same. Fact also is that the said

lady did know, fully well, the fact that I was a-married man, that my wife was alive, that we have two children etc. Similarly, I was also fully aware of Ms. Bhattacharyya's marital status, facts about her family etc. You would kindly appreciate, Sir, that given these realities/bare facts, there was no question of giving her any "false promise" of marrying her. It may also (kindly be noted that Ms. Bhattacharyya is not a dumb, illiterate or ignorant but an educated lady who had worked in the Indian Consulate General Establishment at Atlanta too. Having regard to these, the question of my duping her or entering into a relationship through inducements or allurements of any sort just did not arise. Such allegations levelled against me are, therefore, wholly fallacious and without any truth whatsoever.

5. Similarly, it is rather shocking and preposterous to allege/claim that I forced her to undergo abortions. Mere accompanying her for a medical condition, that too on her request is a baseless and preposterous allegation that the child was mine Sir, simply put, all these are wild allegations made by the lady in her frustration, desperation and disillusion arising from her marital discord (troubled/shattered marriage) about which she confided in me when she was working in the Consulate Establishment at Atlanta. Such scandalous allegations have been raised by her obviously with the sinister objective of maligning me. I would, therefore, request you not to give any credence to such laughable "allegations" made by a person out of envy, vengeance, spite, frustration - and all that."

14. Since the applicant did not dispute the relationship alleged against him, a charge memo was issued on 05.12.2017 proposing minor penalty charge memorandum. In the statement of imputations of misconduct, it was mentioned as under:

"3. Later Shri Srinivasan vide his note dated 17.08.2017 addressed to Director (CNV) submitted that he, during his tenure in Atlanta, developed a fondness for the former local employee Ms.Kamalika Bhattacharyya, which matured into a

relationship with mutual consent. Shri Srinivasan claimed that at no point of time there was any coercion and that initially Ms.Bhattacharyya was accommodative to the fact that he was a married person with two children and having family commitments. Shri Srinivasan stated that during that time, Ms.Bhattacharyya claimed to be pregnant twice and asked his assistance to abort. Shri Srinivasan further stated that she (Ms.Bhattacharyya) threatened him that she would go to the media, Ministry, Family, etc., and that he was compelled to assist her for the abortions in terms of taking her to hospitals etc. Shri Srinivasan further claimed that later Ms.Bhattacharyya started blackmailing him on several issues including framing him on corruption charges, quitting his job etc., Shri Srinivasan also admitted that he regretted entering into a relationship with Ms.Kamalika Bhattacharyya.”

The list of documents included the transcripts of the mails and messages between Ms.Kamalika Bhattacharyya and the applicant, as well as those between Ms.Kamalika Bhattacharyya with the wife of the applicant herein.

15. It seems that the applicant made a representation dated 12.02.2018 denying the charge and referred to his statement dated 17.08.2017, and requested that the proceedings be dropped. The disciplinary authority took note of the contents of the reply dated 17.08.2017 submitted by the applicant and came to the tentative conclusion that the allegation is proved and punishment deserves to be imposed. Accordingly, he sought advice of the UPSC.

16. The transcripts furnished by Ms.Kamalika Bhattacharyya, form part of the record and the applicant did not dispute the same. There was no necessity for the disciplinary authority to conduct the inquiry, firstly because the proceedings initiated under Rule 16 of the CCS (CCA) Rules, and

secondly because the applicant admitted the allegation made against him. The applicant vehemently pleaded that himself and Ms.Kamalika Bhattacharyya developed mutual admiration towards each other, and that led to sexual relationship. He had a daughter through his marriage and Ms.Kamalika had a son through her marriage with another person. He painted a picture that there was a deep trouble in his matrimonial life and Ms.Kamalika Bhattacharyya was virtually seduced by him. This is evident from some of the messages that ensued between Ms.Bhattacharyya and the applicant on one hand and his wife on the other hand. The lady, who was initially convinced to be drawn into the trap of the applicant, was so desperate to come out of it, that she sought the help of none other than the wife of the applicant. The following mail sent to the wife of the applicant reveals that the plight of that woman.

“Dear Anagha, this is Mille. First time in three years I am contacting u. If I don’t know, it’s unfair to u and to me. Forgive me for all your troubles. I am partially responsible and I take ownership for that. U know most of it so I am not repeating. I am trying to move on but Srinivas doesn’t let me. I have blocked him from everywhere but he still keeps contacting my friends and colleagues to inquire about me and pass me information about himself. I don’t want to know about him. The only thing he ‘fears’ is you. He is unstoppable except for the fact that only u can stop him. So my request to you please stop him. U have my support. I will inform you every time he tries to reach out to me from now onwards. I want to put an end to my suffering. I can’t take it any more. And I know u can’t either. You won’t leave him and he won’t leave me. How far can this go? He made me separate from my husband, my parents and my five year old. My son is suffering from behavioral issues. He forced me to abort his child two times in two years. The last one was in April this year. I left my home, I was asked to leave from my secured job at the consulate and I was made to face social seclusion. Ofcourse you have also faced a lot, but this can’t continue. I need to put an end to all of our

suffering. I am in severe depression and don't have the mental courage to stop him from contacting me other than blackmailing him which I already did, now I seek for your help. Pls for Gods sake stop him. He has a tremendous support system which acts on his behalf when he can't contact me. I can't name who all they are for your own sanity. But pls do some guess work and stop all modes of communication for him. If he contacts me, I fall weak. I don't want to. He says constantly he loves me and he can't live without me. I have messages and emails for you to see if u don't believe me. I have seen his fear and aridity when u r after him. He is scared to death. So pls do your thing and stop him. I pray to god every day that he leaves from here. But that's not happening and it's idling all of us. I have never and I won't go after him. I promise u that. But pls stop him. I forgive him for everything."

17. This only reflects the plight of a helpless woman, who was verbally mesmerized to fall into the trap of a man outside her marriage. Our wisdom (i.e., the Members of the Bench) is too small to comprehend, the highly progressive values. We can mention this much that the adultery was not made as an offence when IPC was enacted in 1860. It was on the recommendations of the Second Law Commission after independence that it was made so, obviously to deter the men from prowling upon gullible women, out of their lust, causing damage to her life.

18. Attempts were made from time to time to compare the relationship of a man with an unmarried woman or widow on the one hand; and a married woman outside his marriage on the other hand; before the Hon'ble Supreme Court. As observed by well known Jurists on a number of occasions, no law can meet all the needs of the society at a given point of time and much would depend upon the priorities which the law

maker of the day, feels appropriate. The challenges were deflected by the Hon'ble Supreme Court and the matter was left to be handled by the parliament.

19. It is true that in Joseph Shines case, the Hon'ble Supreme Court has struck down Section 497 of IPC. However, even while that provision was intact, the applicant jumped the law with his brazenness and tried to take shelter under the judgment of the Hon'ble Supreme Court, which came at a later stage. Even in the western societies, where the institution of marriage is not that strong as in India, the parties to the marriage respect it as long as it subsists. If any of the spouses do not intend to continue the marriage, they seek divorce and act according to their wish, but would not try to be dishonest to their spouses when the marriage subsists. In States like Newada in USA, almost instant decrees of divorce are made possible. Though there was some criticism about it, in a way, the facility is far better and respectable, than permitting the spouses of a marriage to deceive each other as, did the applicant herein and his extra-marital partner Ms.Kamalika Bhattacharyya.

20. The applicant, even while exhibiting bravery in having relationship with another married woman, was a bit shaken at the result of the pregnancy. The explanation offered by him for accompanying that lady to the hospital for termination of pregnancy cannot be believed even by a child. Assuming that he was threatened or blackmailed to accompany her

for termination of the first pregnancy, it is not known as to how the same state of affairs would remain as regards second pregnancy. For all practical purposes, the applicant has proceeded under the assumption that there is nothing like value system, for him to follow. It appears that the word "value" for such people connotes their ability to achieve whatever they want, irrespective of the means or norms, leave alone morality. He did great disservice to himself and to the Indian culture, which is highly respected abroad.

21. The UPSC has discussed the entire issue, with reference to the charge memo, explanation offered by the applicant, transcripts of E-mails etc., and advised that the punishment of stoppage of one increment be imposed against the applicant. In a way, it concurred with the tentative conclusion of the disciplinary authority. Thereafter, the applicant was furnished a copy of the advice. The only improvement, he made in his explanation is that he placed reliance upon the judgment of the Hon'ble Supreme Court in Joseph Shine's case wherein Section 497 of IPC was quashed.

22. The result of the judgment of the Hon'ble Supreme Court is that the act of adultery is not a punishable crime. Nowhere, it was mentioned that it is an act, which can freely be resorted to, by any one and escape from civil consequences also. Just as adultery can constitute a ground for divorce, it would also be an act, unbecoming of a civil servant in terms of conduct rules.

23. Morality is a fibre, which runs through every walk of human life. In fact, bereft of the moral fibre, the dignity, which the human beings command, itself becomes shaky. Behind many acts, which constitute crimes or the civil wrongs or acts of misconduct, there is a hidden bankruptcy of morality. In contrast, behind every act, permitted in a civilized society, there is an element of morality. The only difference is that sometimes it is patent, i.e., clearly visible and on other occasions, it is latent, or hidden inside.

24. Legislatures takes steps from time to time to make the moral fiber manifest as and when becomes necessary. To explain the content and purport of the various acts of misconduct defined under Rule 3-C of the CCS (Conduct) Rules, 1964, notifications are issued by the Government from time to time. In one of such notifications published through Government of India, Ministry of Home Affairs, D.P & A.R, 3rd edition, 1980, it is explained as under:

“23. Acts and conducts which amount to misconduct. – The act or conduct of a servant may amount to misconduct –

- (1) If the act or conduct is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master.
- (2) If the act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his master;
- (3) If the act or conduct of a servant makes it unsafe for the employer to retain him in service;

- (4) If the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted;
- (5) If the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
- (6) If the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly;
- (7) If the servant is abusive or if he disturbs the peace at the place of his employment;
- (8) If he is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant;
- (9) If the servant is habitually negligent in respect of the duties for which he is engaged;
- (10) If the neglect of the servant though isolated, tends to cause serious consequences.

The following acts and omissions amount to misconduct. –

- (1) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
- (2) Infidelity, unfaithfulness, dishonesty, untrustworthiness, theft and fraud, or dishonesty in connection with the employer's business or property.
- (3) Strike, picketing gherao – Striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

(4) Gross moral misconduct – Acts subversive of discipline – Riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline.

(5) Riotous and disorderly behavior during and after the factory hours or in business premises.

(6) Habitual late attendance.

(7) Negligence or neglect of work or duty amounting to misconduct – Habitual negligence or neglect of work.

(8) Habitual absence without permission and over-staying leave.

(9) Conviction by a Criminal Court. ”

The misconduct of infidelity, contained in clause (2) referred to above, clearly gets attracted to the case of the applicant.

25. In a way, the applicant must be happy that the proceedings were initiated against him under Rule 16 of the CCS (CCA) Rules, 1966 and a minor penalty was imposed. We are sure that in any other service, the proceedings for such misconduct would have been under Rule 14.

26. We do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs.

**(A.K.Bishnoi)
Member (A)**

Dsn

**(Justice L. Narasimha Reddy)
Chairman**