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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1211/90

Date of decision 4-8-1995

Shri Hari Ram Yadav

... Petitioner

Shri L.K.Upadhyay with
Shri R.K.Singh

... Advocate for the
petitioner(s)

VERSUS

U.O.I. & Others

... Respondents

Shri N.S. Mehta, Senior
Counsel

... Advocate for the
Respondent(s)

CORAM

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not ? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

N.V. Krishnan
(N.V. Krishnan)
Vice Chairman (A)

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1211/90

Date of decision 4.8.95

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Hari Ram Yadav,
Ex-ACIO II/G,
S/o Sh.Jug Lal Yadav,
r/o Vill.Kazi Pur,
P.O. Ujwa, New Delhi-110073

... Applicant

(By Advocate Sh.L.K.Upadhyay with
Shri R.K.Singh)

Vs

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
Govt.of India, North Block,
New Delhi-110001
2. Intelligence Bureau,
through its Director,
Ministry of Home Affairs,
Govt.of India, North Block,
New Delhi-110001

... Respondents

(By Advocate Shri N.S.Mehta, Senior
Counsel)

ORDER

〔Hon'ble Smt.Lakshmi Swaminathan, Member (J) 〕

The applicant has filed this application
under Section 19 of the Administrative Tribunals
Act, 1985 impugning the following orders, namely, -

- (i) Order passed by the Disciplinary
Authority dated 30.3.1989;
- (ii) Order of the Appellate Authority
dated 24.5.1989; and
- (iii) Order passed in revision dated
23.3.1990. (Annexures A to C)

The Disciplinary Authority had passed the impugned
order dismissing the applicant from service after

holding an enquiry under Rule 14 of the CCS (CCA) Rules, 1965 against which the appeal and revision have been dismissed by the orders dated 24.5.1989 and 23.3.1990.

2. The crux of the case is that on receipt from his wife Smt. Sudha Yadav of a complaint/against the applicant, while he was working as Assistant Central Intelligence Officer, II (ACIO) with the respondents at Bombay, that he had contracted a second marriage while his legally wedded wife was alive, a memorandum of charges was served on him on 1.9.1988. The articles of charge framed against the applicant read as follows :-

" Article : I "

The SAID Shri H.R. Yadav, ACIO-II/G, Bombay while functioning as such has entered into bigamous marriage which constitutes breach of Rule 21(2) of the C.C.S. (Conduct) Rules, 1964.

Article : II

The SAID Shri H.R. Yadav, ACIO-II/G, Bombay has reportedly neglected his wife which constitutes breach of Rule 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964. "

An Enquiry Officer was appointed to enquire into the charges. The enquiry officer submitted his report on 4.2.1989. Thereafter, the impugned order was passed by the disciplinary authority after he had considered the Enquiry Officer's report by a detailed and speaking order on 30.3.1989.

3. The applicant has alleged in this

application that the enquiry held against him sub-rules is in violation of Rule 14/(14-19) of the CCS (CCA) Rules, 1965. He alleges that the procedure laid down under the rules and the principles of natural justice have been violated. He states that no witnesses were examined on behalf of the disciplinary authority during the enquiry though a list of 5 witnesses were supplied to him. He claims that the Enquiry Officer was biased against him.

4. Regarding the first charge i.e. that he had entered into a bigamous marriage, the learned counsel for the applicant, Shri L.K. Upadhyay, submits that this charge had to be proved by the documents mentioned in the Memorandum of Charge and by the oral statements of the witnesses, which had not been done in this case. The list of documents supplied with the articles of charge, namely, the application/complaint made by his first wife, Smt. Sudha Yadav, to the respondents, his nomination for DCRG, CGEIS, Provident Fund and application for L.T.C. have not been proved by any of the witnesses. He alleges that the Enquiry Officer relied in toto upon the applicant's admission, if any, found in the three nominations and L.T.C. application, which he claims had been done for different purposes at the behest of his mother. It is relevant to mention that in the nomination forms submitted by the applicant to the respondents, (Annexures R-2 to R-5), he has mentioned the name of Smt. Suman Yadav as his wife. The applicant

submits that in order to sustain the charge of bigamy, proof of the second marriage was essential, which was not proved by any witness, as none had been called by the Enquiry Officer. Three of the witnesses out of the five mentioned in the memo. of charge gave only their affidavits. Relying on the provisions of the Hindu Marriage Act, 1956 and the decisions of the Supreme Court in Kanuwal Ram v. H.P. Administration (AIR 1966 SC 614), he submits that unless the second marriage was proved to have been performed with some ceremonies, it cannot be termed as a second marriage for which he could be charged or held guilty of bigamy. He also relies on Smt. Priya Bala Ghosh v. Suresh Chander Ghosh (AIR 1971 SC 1153) and Jagdish Prasad v. State of Madhya Bharat (AIR 1961 SC 1070). The applicant's contention is that in the absence of proof of the essential religious rites showing that he had been married a second time to Smt. Suman (Yadav) his mere admission of this in the nomination papers submitted to the respondents is not sufficient to hold the enquiry or dismiss him from service. He also relies on the affidavit filed by one Shri Balbir Singh, a witness cited in the memorandum of charges, in which he denies knowledge of the performance of the second marriage of the applicant to Smt. Suman. The applicant's explanation for nominating Smt. Suman Yadav, whom he has mentioned as 'wife', in respect of DCRG, CGEIS, GPF forms made on 31.5.1988 in which the benefits were to

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be given to her and the application dated 6.10.1987/ 15.10.1987 for grant of L.T.C. in which also he has mentioned Suman Yadav as his 'wife' is that he has done so because his mother had asked him to do it as Suman was looking after her, and he wanted to give her some monetary benefits. He categorically denies that Smt. Suman was residing with him at Bombay during the relevant period. The learned counsel's submission on this is that since his second marriage has not been proved by any witness, his own admission in the nominations/application for L.T.C. - relied upon in the statement of imputation - would only amount at best to a charge of irregularity in financial terms and does not show the factum of establishing the second marriage which was required in order to prove the charge of bigamy.

5. The second main ground taken by the learned counsel for the applicant was that the enquiry had not been held in accordance with Rule 14 of the CCA (CCS) Rules and is against the principles of natural justice. According to him, under Rule 14 (14-19) of the CCA (CCS) Rules, the disciplinary authority has to produce, in the first instance, the oral or documentary evidence. Thereafter, the witnesses have to be examined by the Presenting Officer, who may be cross-examined by the Government servant. When the case of the disciplinary authority is closed, the Govt. servant is required to state his defences and copy of his statement is to be given to the Presenting Officer. Thereafter, the

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evidence on behalf of the Govt. servant is to be produced.

After the Govt. servant closes his case, the Inquiry Officer may, if the Government servant has not examined himself, question him on the circumstances appearing against him in the evidence for the purposes of enabling the Govt. servant to explain the evidence. The grievance of the applicant in this case is that no witnesses were examined on behalf of the disciplinary authority during the enquiry though a list was supplied to him. Since, no witness was called, the Inquiry Officer compelled the applicant to be a witness, and he was examined extensively by the Presenting Officer and Inquiry Officer. Thereafter, he was asked to submit statement of defence. This procedure, according to the learned counsel for the applicant is contrary to Rule 14(14-19) of the CCA (CCS) Rules because he could not have been questioned till he has submitted his statement of defence. The learned counsel further submits that the cross-examination of the applicant by the presenting officer and the Inquiry Officer is against the rule and shows that the Inquiry Officer had proceeded in the matter with a bias mind and against the principles of natural justice. To support these allegations, the learned counsel for the applicant submits that the enquiry was started on 15.12.1988. The applicant gave the name of one Shri B.N. Vats as defence assistant and submitted the defence assistant's letter expressing his willingness on 28.12.1988. On 11.1.1989, the enquiry officer issued

a letter asking the witnesses, who were to be examined in the enquiry to appear before him at their own expense for giving their evidence in the matter or to send their affidavits with the documents. On 25.1.1989 which was the date fixed for final examination of the witnesses on behalf of the disciplinary authority, none of the witnesses appeared. The Enquiry Officer permitted the Presenting Officer to examine the applicant. On that date, the Inquiry Officer closed the enquiry and gave copies of the affidavits to the applicant. According to the learned counsel for the applicant, Rule 14(16) of the CCS (CCA) Rules has been violated inasmuch as no opportunity was given to the applicant at the close of the case for the disciplinary authority, to state his defence orally or in writing. The applicant's contention is that he was not given an opportunity to produce his evidence as required under rule 14(17). The applicant's grievance is that these rules are mandatory and since he was not given an opportunity to produce his defence witnesses, these rules and the principles of natural justice have been violated.

6. The respondents, in their reply, have contested the above averments. They contend that the procedure prescribed in Rule 14 of the CCS (CCA) Rules has been duly complied with in this case. Since the applicant had denied in his written statement both the articles of charge, an enquiry under Rule 14 was instituted against him. Though he was permitted to avail of Shri B.N.Vats, UDC as defence assistant, the latter failed to attend the subsequent hearings on 11.1.89 and 25.1.89. Both the witnesses - Smt. Sudha Yadav and her father were asked by the Inquiry Officer to appear

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before him on 19.12.1988 to give evidence. Since they did not appear on 19.12.1989, a letter was sent by the Enquiry Officer on 20.12.1988 asking them to appear before him on 11.1.1989, together with the documents in original to show her marriage with the applicant and his re-marriage with Suman.

It was also mentioned in the letter that if they are unable to attend the enquiry, they may send an affidavit incorporating full details along-with supporting documents. Smt. Sudha intimated that she was not in a position to undertake the long journey from Gurgaon to Bombay because of her illness for which she submitted a medical certificate. Later on, Smt. Sudha and her father sent affidavits dated 2.1.1989 (Annexures R-6 and R-7). The respondents state that since the witnesses had only submitted their affidavits and had not appeared in person, the applicant could not cross-examine them during the enquiry. They, however, state that the charges were found proved not only based on these affidavits but by the applicant's own statements submitted to the office much before the complaint was received from the first wife, Smt. Sudha Yadav, in the form of nominations for DCRG, CGEIS and GPF, wherein the

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applicant has shown his relationship with Smt. Suman as his wife, for receiving 100% benefits under these schemes. These have been referred to in the statement of imputation. The applicant has also not questioned the fact of his first marriage to Smt. Sudha. In their reply, the respondents have also relied upon the Ministry of Home Affairs O.M. dated 9th December, 1960 (Annexure R-1) clarifying that the disqualification under Rule 21 of CCS (Conduct) Rules is attracted even if the second marriage is invalid in law because the first spouse is alive. They also state that the applicant did not produce any evidence or witness, though he had agreed to make Smt. Suman and her father, Shri Jug Lal Yadav available for giving evidence on 11.1.1989. However, he failed to bring them on the ground that his mother was seriously ill at his native place and they were looking after her. In the circumstances, they submit that the Inquiry Officer closed the proceedings after examining the applicant on 25th January, 1989. Shri N.S. Mehta, learned Senior Counsel for the respondents, therefore, submits that the applicant himself has not produced any evidence though he was given the opportunity. The applicant has himself admitted in the various nomination forms and L.T.C. application submitted in the office earlier that Smt. Suman Yadav is his wife

He has also not contested the fact that he was married to Smt. Sudha Yadav on 1.12.1978 and he has not obtained any orders of separation or divorce from her from the competent court of law.

He, therefore, submits that the conclusions of the Enquiry Officer are based not only on the affidavits submitted by the witnesses but also on the admissions

made by the applicant himself in the various nominations and application for L.T.C. submitted

by him. Shri Mehta submits that no prejudice has been caused to the applicant in this case. The plea of the applicant that he had claimed L.T.C. for

Smt. Suman, who was accompanying his mother who was ill in order to look after her, was not accepted as convincing by the competent authority taking into

account the circumstances of the case. Shri Mehta, therefore,

submits that the application may be dismissed as

the enquiry had been properly conducted against the applicant in compliance with the rules and the principles of natural justice.

7. We have carefully considered the facts, records and pleadings in the case and the arguments of the learned

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counsel of both the parties.

8. It is settled law that in a domestic enquiry, strict and sophisticated rules of evidence do not apply but the rules of natural justice have to be complied with. All materials which are logically probative for a prudent mind are permissible. (See

State of Haryana and Another v. Rattan Singh

(1977 SCC (L&S) 298, and UOI v. T.R. Verma (AIR 1957

SC 882). In another case UOI v. Parma Nanda

(AIR 1989 SC 1185), the Supreme Court has held

that the Tribunal cannot interfere with the

finding of the Enquiry Officer or the Competent authority

where they are not arbitrary or utterly perverse

and is based on evidence, even if some of it is

found to be irrelevant or extraneous to the matter.

The Supreme Court has observed that if the penalty

can lawfully be imposed and is imposed on the

proved misconduct, the Tribunal has no power to

substitute its own discretion for that of the

authority, "unless the decision of the competent

authority is arbitrary or utterly perverse." In

the present case, the grievance of the applicant

that there was no proof of any ceremony performed by

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him in respect of the second marriage with Smt. Suman does not appear to be relevant in the light of his own admission and claims made in the nomination forms for DCRG, GPF, CGEIS and the application for LTC in which he has stated in categorical terms that Smt. Suman is his 'wife'. He himself has not shown any documentary proof or any other evidence to refute the allegation made by his first wife, Smt. Sudha and her father in their affidavits stating that he has married another woman by the name of Smt. Suman which is borne out by his own statements. The proof required in a criminal case is not required in a domestic enquiry (Kanwal Ram v. Himachal Pradesh Administration (AIR 1966 SC, 614)).

In Jagdish Prasad Saxena v. State of Madhya Bharat (AIR 1961 SC 1070) the Supreme Court has held that a departmental enquiry is not an empty formality. In this case, which is relied upon by the applicant, the Supreme Court has observed that in the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold

that in view of the admissions made by him, the enquiry would have served no useful purpose. The court stated that this is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services. The facts in this case before us are totally different from the facts in the case of Jagdish Prasad Saxena (Supra). In this case, the departmental enquiry has been held against the applicant where he has been given ample opportunities to defend his case. Although, no witness had deposed before ^{the} enquiry officer regarding the ceremony of second marriage of the applicant with Smt. Suman, the explanation given by the applicant as to why he had submitted the nomination forms and application for L.T.C. claiming Smt. Suman as his wife appears to be totally unconvincing, as also held by the competent authority. From whatever angle it is looked at, it cannot be accepted as reasonable for the applicant to refer to any other woman as his 'wife' in official documents, and then merely say that he was, in fact, not married to her. If, as stated by the applicant his mother was so unwell that she needed Smt. Suman to look after her, how she would have been able to go on the trip for which he claimed the L.T.C? Besides, being a Govt. servant he ought to have been fully aware of the consequences of such a declaration claiming another woman as his 'wife' when his first legally wedded wife is alive. In the circumstances, the Inquiry Officer has accepted the affidavits

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of his first wife, Smt. Sudha, and her father on the grounds mentioned above, and this cannot be held to be either arbitrary or unreasonable or perverse.

9. We have also perused the D.E. file containing the answers of the applicant to the queries put by the Inquiry Officer and Presenting Officer on 25.1.1989. We find that the questions put to the applicant were in the nature of clarification and not cross-examination. There is also a note of the Inquiry Officer dated 25.1.1989 signed by the applicant which is reproduced below :-

" Dated 25.1.89

Regular proceedings were held at Bombay in SIB Office on 25.1.89 at 1100 hrs. at which the Presenting Officer and Charged Officer were present. The Charged Officer volunteered and got himself examined by Presenting Officer and by the Inquiry Officer.

The Charged Officer has been asked to give his defence statement, if any. If no defence statement is received by January 10, 1989, it will be presumed that the Charged Officer has nothing to say. He has also been asked to produce any documentary evidence, if any, with regard to the charges levelled against him. If no documents are received by January 10, 1989, it will be presumed that the Charged Officer has no documents with him to produce before the Inquiry Officer. The Charged Officer did not present any witness from his side nor did he present the defence assistance. The inquiry, therefore, has been treated as closed. The Charged Officer was supplied the xerox copies of affidavits of (1) Jai Narain Yadav, (2) Sudha Yadav and (3) Jagroop Singh on 25.1.1989.

Sd/-

Sd/- Inquiry Officer
Charged Officer. Presenting Officer. 25/1/89.
25/1/89. 25/1/89.

I may please be permitted to submit my defence statement by 1.2.89.

Permitted.

Sd/- Inquiry Officer
25/1/89.

It is seen from the above statement that the applicant has

JP himself voluntarily given the statement, and signed the same.

10. It is further established from the above that the applicant apparently did not comply with the orders to produce his defence statement, if any, by 30.1.1989 but produced the same on 1.2.1989. From the O.E. proceedings it is, therefore, clear that the applicant had been given ample opportunities to produce his defence witnesses but he failed to do so. Even if as alleged by the applicant, Rule 14(16) of the CCS (CCA) Rules may not have been strictly complied with, we are of the view, that this by itself will not be of any assistance to the applicant taking the totality of the facts in the case. In Krishan Lal v. Jammu & Kashmir (1994(27) ATC 590), the Supreme Court, following the decision of the Constitution Bench in Managing Director ECIL v. Karunakar (JT 1993 (6) SC 1) has observed that even if the order of dismissal is passed without supplying copies of the proceedings and the enquiry is held in violations of the mandatory section 17(5) of the J&K (Government Servants) Prevention of Corruption Act, 1962, it would not be sufficient to set aside the order of dismissal. The facts and circumstances of the case have to be looked into. In this case, the applicant could have very well submitted his witnesses, evidence and his defence in the case before the enquiry officer, if he chose to and we are satisfied that all reasonable opportunities to be heard had been afforded to him. Having regard also to the applicant's categorical statements given in the nomination forms and application for LTC claim submitted

to the respondents that Smt. Suman is his 'wife' between the period of 1987 to 1988, and the fact that he does not deny his marriage to Smt. Sudha in 1978 which is still subsisting, the conclusion of the competent authority cannot be termed as either arbitrary or perverse justifying any interference in the matter. This being a domestic enquiry, the strict rules of evidence to prove the charge of bigamy in a court of law are not applicable as contended by the applicant and this plea is also rejected. We do not also find any merit in the other pleas taken by the applicant.

11. Before we conclude we have only to add, that in the circumstances of the case, the onus of proving that Smt. Suman was not the applicant's wife shifted to the applicant during the enquiry proceedings ; particularly because of his declaration in various official documents that she was his wife. He could well have produced her as his witness to depose that she was not his wife and that she was not aware of the declarations he had made in this regard. Nothing could have been easier than this to demolish the allegation against him. We can only surmise that Smt. Suman may perhaps have declined to depose on these lines, or even give an affidavit to this effect.

fearing the consequences to her, ^{re} for, as the wife of the applicant, which is what the applicant claimed about their relationship, she would run grave and unknown risks if she deposed that she was not his wife, merely to prop up his defence in this Departmental Enquiry.

12. In the facts and circumstances of the case, we find that the decisions of the competent authorities warrant no interference in the matter. Accordingly, the O.A. is dismissed. No order as to costs.

Lakshmi Swaminathan ✓ 4/8/85
(Smt. Lakshmi Swaminathan) (N.V. Krishnan)
Member (J) Vice Chairman (A)