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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2690 of 1992

New Delhi, this the 13th day of January, 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member(Admnv)

Ex. Constable Akhilesh Kumar No.937/NE
son of Shri Shiv Charan, aged about
29 years, r/o B-8, Sarai Peepal Thala,
Nanda Road, Adarsh Nagar, Delhi-110 033 **-APPLICANT**

(By Advocate - Shri Shankar Raju)

Versus

1. Additional Commissioner of Police,
New Delhi Range, M.S.O. Building, Police
Headquarters, I.P. Estate, New Delhi
2. Additional Dy. Commissioner of Police,
North-East District, Shahdara, Delhi. - **RESPONDENTS**

(By Advocate - Shri Vijay Pandita)

JUDGMENT

By Mr. N. Sahu, Member(Admnv)-

In this Original Application the applicant prays for quashing the impugned order of dismissal passed by the Additional Deputy Commissioner of Police, North-East District Delhi dated 4.10.1991 which was subsequently confirmed in appeal by Annexure-A-8 dated 6.8.1992 by the Additional Commissioner of Police.

2. The brief facts of the case are that a preliminary enquiry was conducted by the Vigilance Department of the North-East District whereupon respondent no.2 ordered a departmental enquiry against the applicant. The allegation was that he performed another marriage with a lady named Amresh, daughter of Khima, resident of village Jimani, district Meerut while his first wife Smt. Rekha daughter of Shri Baljeet Singh

resident of E-1186 Netaji Nagar, Delhi was alive. This amounted to gross misconduct and violation of Rule 21 of the CCS(Conduct)Rules, 1964 rendering him liable for departmental action. 10 prosecution witnesses were examined along with five defence witnesses. The conclusion was that the defence witnesses were all interested witnesses. He relied on the report of Constable Satish as well as the secret enquiry conducted by the enquiry officer. He came to the conclusion that a second marriage was contracted by the applicant without the consent of his first wife and held that the charge as proved.

3. This order and the subsequent order were challenged on the ground when during a preliminary enquiry a cognizable offence of bigamy under section 494 of the IPC came to light, the departmental enquiry should have been ordered after seeking prior approval of the Additional Commissioner of Police, but no such approval was taken. The officer who conducted the preliminary enquiry Shri K.C.Meena was examined as P.W.6 in the departmental enquiry but yet neither the recorded statement during preliminary enquiry nor his report was made available to the applicant. The next contention is that the finding of the enquiry officer is based on no evidence and rests on suspicion. Under the Hindu Marriages Act the evidence of a ceremonial marriage was "Saptapadi" and this was not established. The priest who performed the marriage was not examined. The complainant Smt.Rekha herself deposed that she came to know about the second marriage of her husband from one Shri Azad. This person was examined as a defence

witness but he clearly deposed that no marriage had taken place between the applicant and Smt. Amresh. Smt. Amresh the alleged second wife herself deposed that her marriage was solemnized on 5.6.1990 with one Karamveer and in proof of that a Panchayatnama signed by the Sarpanch was placed on record. Other defence witnesses examined by the enquiry officer proved the marriage of Karamveer with Amresh and not with the applicant. It is next contended that the enquiry is vitiated on the ground of violation of Rules 8(a) and 10 of Delhi Police (Punishment and Appeal) Rules. Under these rules the disciplinary authority was bound to record a finding of grave misconduct as well as to record the unfitness of the applicant for Police service. These findings are absent in the impugned orders. Without these findings the applicant's dismissal order is vitiated. The other grounds challenged the secret enquiry conducted and the arbitrary restriction of the defence witnesses to only 5 when a list of 21 witnesses was submitted by the applicant. The exclusion of 16 defence witnesses without recording reason was stated to be arbitrary.

4. It is necessary to state at length the subsequent events in this case. Particularly, the proceedings before the Metropolitan Magistrate before whom the charges under Section 406 and 498A of the IPC were considered in FIR No. 92/93. The applicant was married with Smt. Rekha, the daughter of Baljeet Singh on 10.6.1985. The allegation was that after six months of marriage she was turned out of the house for not bringing in adequate dowry. The applicant, it is

alleged, remarried without obtaining a divorce. An enquiry was conducted and a case was registered. The prosecution has examined five witnesses in support of its case and thereafter the parties arrived at a compromise. In full and final settlement of all claims the complainant received a sum of Rs.25,000/- from the applicant. The Magistrate recorded that this offence under Section 498A of the IPC is not compoundable but compromise being the soul of justice he consented to the said compromise since the complainant compromised with the accused voluntarily without any threat or pressure. The Magistrate acquitted the accused of the offence. In another letter Smt. Rekha stated that she would not claim any maintenance or alimony in future and forfeited her claim regarding "Istridhan". She consented that she would withdraw the petition under Section 125 of the Cr.P.C. filed by her and stated that she would file a separate petition for divorce.

5. After notice the respondents stated that under Section 21 of the Delhi Police Act the authorities mentioned therein have been given powers to award specified punishments and the respondents have not deviated from the statutory mode proscribed. They cited Rule 15(3) to say that a suspected police officer may or may not be present at a preliminary enquiry but when present he would not cross-examine the witnesses. The file of preliminary enquiry would not form part of the formal departmental enquiry but statements therefrom may be brought on record. With this provision, the respondents justified their action of bringing the material gathered during the preliminary enquiry into

the record. The fact, according to the respondents is that the applicant performed the marriage on 5.6.1990 with a lady named Smt. Amresh while his first wife was alive. The enquiry officer submitted his finding holding the applicant guilty of the charge. A copy of the finding of the enquiry officer was served on the applicant on 6.7.1991 with a direction to make a representation within 15 days. He submitted his reply on 7.8.1991. He was fully heard and the disciplinary authority dismissed him from service. The appellate authority also was not satisfied with the reasons given against the order of the disciplinary authority. He confirmed the same. Thus, the entire enquiry was conducted in accordance with the rules and the enquiry officer has also considered the statement made by the defence witnesses and considered each aspect of the evidence adduced giving ample opportunity to the applicant to defend himself. Since no priest was engaged and the marriage was solemnized in a very simple way, there was no need to call the priest. The allegation that the witnesses are not the residents of the village where the alleged marriage had taken place is denied. Shri Rajinder Singh, PW3 and Shri Kanshi Ram, PW are the residents of village Jimani where the second marriage took place on 5.6.1990. The crux of the plea taken by the respondents is founded in Para 13 page 9 of the counter. It is stated that out of 7 PWs examined five are independent witnesses and a physical verification was made by the Inspector by deputing a constable to the place of marriage. It appears that Smt. Amresh and her brother visited the Inspector Shri K.L. Meena and admitted orally the marriage with Amresh

on 5.6.1990. On the contrary the DWs are close relatives of the applicant and interested witnesses and, therefore, their statements are unreliable.

6. We have carefully considered the submissions. The basic evidence of the prosecution is the Panchayatnama which confirms the marriage of the applicant with Smt. Amresh. Rajbir Singh, Om Prakash, Raghbir Singh, Tain Singh and Smt. Amresh were summoned but they did not accept the notice. Om Prakash allegedly told the Process Server that Amresh was married to Akhilesh but he would not want to come and depose and earn their enmity. The enquiry officer further recorded that the father of the girl also admitted the marriage. The Inspector Vigilance who made the secret report recorded that Karamveer S/o Azad with whom Smt. Amresh confessed to have married on 5.6.1990 is the real nephew of Shiv Charan, the father of constable Akhilesh Kumar.

7. Out of these 8 witnesses who signed the Panchayatnama of marriage with Smt. Amresh, not a single witness was examined as a defence witness and not a single witness was impeached for making a wrong statement. The other PWs who have been examined by the enquiry officer and cross-examined by the defence have stuck to their original statement about marriage with Amresh.

8. We are in this case concerned not as much about the legality of the second marriage but the very fact of second marriage. The second marriage may be

voidable in the eye of law and the applicant was already under notice as having committed an offence of bigamy. We have not answered a few important questions on the question of second marriage. The evidence given by Smt. Amresh and her father subsequently seems to be a cover up to protect the applicant from the penalty of dismissal. In our view there is adequate ground to hold that on facts there is compelling evidence of the fact of a second marriage of the applicant with Amresh. The Panchayatnama; the fact that none of the witnesses have denied the marriage; the personal enquiry of the constable; the enquiry of the vigilance inspector; and the preliminary enquiry are neither motivated nor biased. They are only contemporaneous reporting of the fact of marriage. When the going went rough for the applicant, he wanted to save his job and started questioning the prosecution charge but we cannot say that there is no evidence to indicate a second marriage. Let us look at it from another angle. It is clearly established that the applicant ill-treated his first wife, drove her away from the house for not bringing adequate dowry. There was disharmony in the conjugal relationship. In consequence there was a petition for maintenance by the first wife and also an award for maintenance. There was also a suit for divorce and a criminal complaint. The composition of the complaint because of a compromise would show that the applicant was not innocent. He paid Rs. 25,000/- by way of compound fees and in satisfaction of all claims. This proves that the first marriage was in rocks. There was disharmony, bitterness and enmity. It is in this background that a complaint was received about the

second marriage which was enquired into by the Vigilance Inspectorate. A preliminary enquiry was conducted. A constable was deputed to the site of the marriage. A contemporary panchnama was obtained and so far none of the witnesses to the Panchnama was impeached. Ultimately a disciplinary authority has to see whether there are at least enough facts to indicate that the applicant as a Government servant behaved in a way which was unbecoming of a Government servant. Whether bigamy is fully established or not, whether all the elements of criminal culpability were proved or not, it is for the criminal prosecution to decide. In a disciplinary proceeding such conclusive proof is not necessary.

9. The applicant's counsel strenuously argued that certain important ingredients of a traditional marriage, namely, "Saptpadi" are not proved. This observance of 'Saptapadi' can be insisted upon only in a ceremonial sacramental marriage but not in a civil marriage. The Panchnama is only an attestation of the fact of a ~~civil~~ marriage before a few witnesses. We cannot say that there is no evidence of the applicant making a second marriage for the purposes of disciplinary proceedings. We do not find that this is a case of no evidence. It cannot be also called a case where a severe punishment was awarded for a doubtful offence. We, therefore, come to the conclusion that (i) the disciplinary proceedings were conducted in accordance with the procedure established in law; (ii) there is no illegal assumption of any jurisdiction; (iii) whether there is conclusive evidence or not we find there is basis for holding that there was some

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evidence of a second marriage and on the basis of Panchnama filed this marriage is concluded. We cannot hold that the punishment awarded was disproportionately high. The applicant's conduct also was blameworthy for deserting his wife on alleged grounds of dowry and ill-treating her which by itself constitutes violation of law. The second wife Amresh may change her version to save the applicant from dismissal. In matters of marriage and conjugal rights, the witnesses would not have come forward to depose about the event of marriage without the actual event happening. We find that there is no material to interfere with the order of dismissal and the appellate order confirming the same. The O.A. is dismissed. No costs.

N.Sahu,

(N.Sahu)
Member (Admnv)



(Dr. Jose P. Verghese)
Vice Chairman (J)

rkv.