CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 3046/1992
T.A. No. 199

DATE OF DECISION 17th March, 1998

Shri Vijay Kumar Rana — Petitioner

Shri K.B.S. Rajan — Advocate for the Petitioner(s)

Versus

UOI & Ors — Respondent

Shri Dushyant Pal, Deptl. Rep. — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.N. Bhat, Member (J)

The Hon'ble Mr. S.P. Biswas, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.

(S.P. Biswas)
Member (A)
17.3.98

Cases referred:

1. Balasinor Nagrik Coop. Bank Ltd., Vs. Babhubai AIR 1987 SC 849
2. LIC Vs. Escorts Ltd., (1986) 1 SCC 264
3. Sarla Mudgal Vs. UOI (1995) SCC 635
4. State of Karnataka & Anr. Vs. T. Tenkataramanappa (1996) 6 SCC 455

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3046/1992

New Delhi, this 17th day of March, 1998

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Vijay Kumar Rana
152, Sector IX, R.K. Puram
New Delhi .. Applicant
(By Advocate Shri K.B.S. Rajan)

versus

Union of India, through
1. Secretary
Ministry of Defence
South Block, New Delhi
2. Joint Secretary(Admn.) & Chief Admn. Officer
Ministry of Defence
C-II Hutments, Dalhousie Road
New Delhi .. Respondents
(Shri Dushyant Pal, Deptl. Representative)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, an ex-UDC in the office of Chief Administrative Officer/Ministry of Defence(CAO/Min of Def for short) is aggrieved by A-1 order dated 29.7.92 by which he has been REMOVED from service after modifying the initial order of DISMISSAL following alleged violationof Rule 21(2) of CCS(Conduct) Rules. Consequently, he has filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

(i) Order dated 29.7.92 passed by the appellate authority be quashed;

(ii) Respondents be directed to reinstate him in the same post wherefrom his services were terminated; and

(iii) To pay backwages for the period ever since the times of termination alongwith interest

2. The brief facts necessary to be mentioned for the disposal of this case are as hereunder:

Though belongs to Hindu religion, applicant got himself converted to Islam on 2.4.88 when he was already married (in 1981) with Ms. Kiran, a Hindu girl. Applicant came contact with yet another Hindu girl by name Ms. Pratibha Khullar in early 1989 and married Ms. Khullar (second wife) on 22.3.89. The said second marriage was preceded by conversions of applicant as well as his second wife to Islam on 2.4.88 and 22.3.89 respectively. Being aggrieved, the first wife filed a complaint (R-2) against the applicant in April, 1989. Applicant intimated on 17.4.89 about his conversion to Islam religion. On receipt of a show cause notice following R-2 aforesaid, applicant disclosed all the details by A-4 communication dated 20.7.89. Based on A-4, respondents issued major penalty proceedings (A-5) on grounds that "Shri Rana did not seek any sanction for such a plural marriage from the Government prior to the marriage and clearly violated Rule 21(2) of CCS (Conduct) Rules, 1964". Of the two charges, the one pertaining to applicant having married second time during the subsistence of his first wife without obtaining prior permission of the government was proved. However, the other charge that he did not disclose the fact of second marriage voluntarily was not established. Disciplinary authority's order on 28.1.92, dismissing the applicant was modified to removal from service by the impugned order dated 29.7.92 (A-1) issued at the leval of appellate authority.

3. Shri K.B.S. Rajan, learned counsel for the applicant argued strenuously to assail the impugned order on several grounds. It was contended that circumstances where prior sanction of the competent

authority had to be obtained are stipulated in Rules 4, 8, 10, 12, 14, 18 and 19 of CCS(CCA) Rules, 1965. But the term "prior sanction" is clearly and conspicuously missing in Rule 21 of of the Conduct Rules and this shows that such a previous permission is not a condition-precedent to second marriage. Drawing support from the decision of the Hon'ble Supreme Court in the case of **Balasinor Nagrik Coop. Bank Ltd. Vs. Babubhai (AIR 1987 SC 849)**, the counsel argued that statute must be read as a whole. In the case of Conduct Rules, where different rules provide previous sanction are well defined and but the same abjective is absent in the proviso to Rule 21 and hence authorities cannot interpret "permission" as meaning previous/prior permission. There is no mandatory requirement that the permission should be previous. To buttress his contention further, learned counsel quoted the dictum of Hon'ble Supreme Court in the case of **LIC Vs. Escorts Ltd. (1986) 1 SCC 264**, wherein it has been held that:

> **"But permission subsequently obtained may all the same validate the previous act",**

The counsel further submitted that when the two conditions stipulated in Section 21 are fulfilled, there is little discretion available to the authorities to deny such permission. Any refusal or failure to finalise an application for permission within a reasonable time would amount to deprivation of one of the fundamental rights till permission is accorded.

4. Learned counsel would further contend that when we analyse the very purpose of existence of conduct rules, it aims at ensuring that efficiency in organisation is not hampered or jeopardised. He adds that so long as the servant keeps the name of the employer at a high pedestal by his conduct, plural marriage either prior to or posterior to the appointment does not in any way affect the organisation and all that is required is that the employer should be in the know of the same for giving exemption if it is prior to appointment and permission if the same is a posterior occurance. Thus, the word "may" appearing in the proviso to Rule 21 of the Rules does not mean only "shall".

5. In the counter, respondents submitted that the applicant never sought permission either prior or after the incident of second marriage. A plural marriage as referred to in clause (i) or (ii) of the Rules under Section 21 is subject to "satisfaction of the competent authority" and such satisfaction has to be on the touchstone of the following two conditions:

> "(a) Such marriage is permissible under the personal law applicable to such government servant and the other party to the marriage; and
>
> (b) there are other grounds for so doing"

6. As per rules, it is not a mere formality in terms of providing an intimation and that too after the event is over. Respondents would also submit that violation of provisions under Rule 21(2) of CCS(Conduct) Rules, 1964 is a crime under Indian Penal Code, 1860. While holding the applicant responsible for the second marriage in violation of the above rules, the counsel drew our attention to the judgement of the Hon'ble

Supreme Court in the case of **Sarla Mudgal Vs. UOI (1995)3 SCC 635,** to say that respondents' stand on the subject gets well supported in the ratio arrived in the above case.

7. Questions for our consideration are whether:

(a) a Hindu male, married under Hindu law, by embracing Islam, can solemnise a second marriage?

(b) such a marriage without having his first marriage dissolved under law would be a valid marriage vis-a-vis first wife who continues to be living? and

(c) a mere post-facto "intimation" as such can substitute the provision of permission under CCS Rules and a Government employee having thus resorted to second marriage without permission during the subsistence of his first marriage can be absolved accordingly?

8. The details of Rules/law that would govern such a case are as as hereunder:

Section 21 stipulates that:

(A) "(1) No government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living shall enter into, or conduct, a marriage with any person;

provided that the Central Government "may" permit a Government servant to enter into, or contract, anysuch marriage as is referred to in Clause (1) or clause (2), if it is satisfied that -

"(a) Such marriage is permissible under the personal law applicable to such government servant and the other party to the marriage; and

(b) there are other grounds for so doing"

(B) The provisions of Hindu Marriage Act, 1955 are applicable in the present case. Section 29(2) of the said Act recognises right conferred by custom to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of that Act. In para 17(I)

of Mulla's Hindu Law, essentials of a valid custom are given and it is stated that a custom is a rule which in a particular class or community or in a particular district, has from long usage obtained the force of law. It is also provided in sub-para (2) of para 17 that it is incumbent on a party setting up a custom to allege and prove the custom on which he relies. It is for the delinquent official to prove that the divorce from his first wife was in accordance with his alleged custom/ system.

(C) Section 494 of Indian Penal Code applies only where second marriage would void by reason of its taking place during the life of the husband or wife as the case may be as provided in that section. This section applies to Chritian, Parsi and also to female Hindu and female Muhammadans. It also applies to males in whose case bigamous marriages are declared to be void. A Hindu who commits the offence of bigamy can be punished under Section 494 Indian Penal Code, if after the Hindu Marriage Act (1955) came into force, he marries a second woman during the life time of his first wife. In order that an offence under Section 494 may be committed, it is necessary that all the ceremonies which are necessary to be performed in order that a valid marriage may take place, ought to be performed and ordinarily all the ceremonies would amount to a valid marriage but for the fact that the

marriage becomes void on account of the exitence of a previous wife (see AIR 1955 CAL 533).

9. Thus, in a situation where a Hindu male marries Hindu girl and one of the parties later on converted to Islam, second marriage can be invalidated under provisions of Hindu Marriages Act. The reason for the voidness of the second marriage is the subsistence of the first marriage even after the conversion of the husband. When marriage is performed under Hindu Marriages Act, it can be dissolved only under Section 13 of the said act. If that be so, parties who have solemnised marriage under this Act remain married even when the husband adopts Islam in pursuit of the second wife **(emphasis added)**. We are fortified in this respect by the decisions of the Hon'ble Supreme Court in the case of Sarla Mudgal (supra). In that case, their Lordships while dealing with an identical matter held that:

> "second marriage of a Hindu husband after conversion to Islam, without having his first wife dissolved under law, would be invalid. The second marriage would be voidin terms of the provisions of Section 494 IPC and the apostate husband would be guilty of offence under Section 494 IPC".

This answers the first issue in our consideration.

10. Coming to the second, we find that in the the enquiry proceedings conducted, the applicant has been held responsible for "Misconduct". First charge levelled against the applicant is the one that falls within the mischief of Rule 21 of the CCS(Conduct) Rules, 1964. It, mutadis mutandis, applies to an organisation of the CAO/Defence. Sub-rule (2) of Rule

21 analyses that no government servant having a spouse living shall enter into or contract a marriage with any permission. That being the case, there is no legal infringement for holding departmental enquiry against the applicant for an act of misconduct falling under sub-rule 2 of Rule 21 of CCS(Conduct) Rules, 1964. Only when the misconduct could not be said to have been established that a government servant can claim quashing of any punishment awarded to him and further claim reinstatement in service. In the present case, the applicant has not denied his conduct of having married second time and the resultant misconduct has been found beyond any shadow of doubt.

11. The cases cited by the applicant do not render any assistance to him. In the case of Balsarinar (supra) the Apex Court was examining the powers of a society for expulsion of its members under sub-section (i) of Section 36. The second proviso in that is in the nature of a fetter on the powers of the Registrar to accord approval or disapproval for such expulsion. As such, it was held that construction placed by judicial authorities on sub-section is to be made by reading all parts together. In the present case, Rules 4, 8, 10, 12, 14, 18 and 19 of CCS(CCA) Rules, 1965 are independent of Rule 21(2). Inthe other case of LIC (supra), the Parliament deliberately avoided the qualifying word "previous" in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. We find the absence of the term 'previous' was pre-determined. It had a nexus with the objective

to be achieved. It is well settled in law that each case has to be decided in the background of facts and circumstances of that very case.

12. We find from the records that the entire case surfaced only on receipt of a complaint from applicant's first wife on 24.4.89 indicating that the applicant has married Ms. Khullar (alia Ayisha) who was working as Assistant Grade II in the same office. From the sequence of events as in para 2 aforesaid, it would be evident that the applicant apparently avoided seeking permission for the second marriage in advance. The applicant could have never been granted prior permission by the Government for the second marriage because of personal law prohibiting such marriage. Hindu Marriage Act strictly enforces monogamy. We find a direct support of our stand aforesaid in the decisions of the Apex Court in the case of **State of Karnataka and Anr. Vs. T.Venkataramanappa (1996) 6 SCC 455** wherein continuation of department enquiries (after acquittal in criminal proceedings) was upheld for contracting a second marriage without requisite permission from the Government. In the present case, we are not required to adjudicate on the issue of permission since the applicant never sought for any permission either prior or even after the second marriage. Therefore, the applicant cannot be allowed to invoke the proviso(2) of Rule 21 of the Conduct Rules. Our service conduct Rules do not make any exception for any Government official belonging to a particular community, not even for those who are born Muhammadans. In our considered view, the fact that such permissions are granted subject to satisfying certain conditions is itself good enough to indicate

that prior permission is essential to enable the Government to assess the situation and satisfy that pre-conditions are available before such a permission could be accorded. The event of applicant's second wife's conversion taking place on 22.3.89 and marriage having been solemnised on the same date was all intended to provide a legal camouflage against the illegality of the second marriage with Ms. Pratibha. We find that the applicant has committed an error not only in avoiding to seek permission but also in maintaining that mere "intimation" should be enough. When absence of a particular permission is punishable in law, the said permission has to be **apriori.** "Intimation" can neither be equated nor be substituted for "permission" in all circumstances **(emphasis added).**

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13. In the light of the aforementioned rules/laws, the second marriage during the subsistence of the first marriage is indisputably a "misconduct" under the service rules applicable to the case of the applicant. With the said **"Misconduct"** having been established beyond reasonable doubt, we find no good grounds, much less convincing ones, warranting our intervention in the matter.

14. In the result, the application fails and is accordingly dismissed. No costs.

(S.P. Biswas)
Member(A)

(T.N. Bhat)
Member(J)

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