



**Central Administrative Tribunal
Allahabad Bench, Allahabad**

O.A. No.944/2009

Order reserved on : 18.08.2021
Order pronounced on : 31.08.2021

(Through Video Conferencing)

**Hon'ble Mr. Tarun Shridhar, Member (A)
Hon'ble Mrs. Pratima K. Gupta, Member (J)**

1. Smt. Sheela Devi aged about 45 year's wife of Late Shri Bishun Dev Son of Sri Budh Ram Resident of C/o Prem Chand Ram Nagear Colony, Road No.1 Izat Nagar, Bareilly.
2. Manish aged about 21 years Son of Late Bishun Deo, House/Bldg./Apt:u/p 141, Street/Road / Lane: bichhiya Jungle tulsiram, Landmark near ramleela maidan, Area/Locality/Sector ward 3, Village/Town/City. Shivpur, District-Gorakhpur, P.O. Jangle Salikram, State Uttar Pradesh. Fin Code. 273014.
3. Naveen aged about 19 years Son of Late Bishun Deo, House/Bldg./Apt:u/p 141, Street/ Road/Lane: bichhiya jungle tulsiram, Landmark near ramleela maidan, Area/Locality/Sector ward 3, Village/Town/City. Shivpur, District-Gorakhpur, P.O. Jangle Salikram, State Uttar Pradesh. Pin Code. 273014.
4. Vishal aged about 17 years Son of Late Bishun Deo, House/Bldg./Apt:u/p 141, Street/ Road/ Lane: bichhiva jungle tulsiram, Landmark near ramleela maidan, Area/Locality/Sector ward 3, Village/Town/City. Shivpur, District-Gorakhpur, P.O. Jangle Salikram, State Uttar Pradesh. Pin Code. 273014,



5. Vikrant aged about 16 years
Son of Late Bishun Deo,
House/Bldg./Apt:u/p 141, Street/
Road/Lane: bichhiya
jungle tulsiram, Landmark near ramleela maidan.
Area/Locality/Sector ward 3, Village/Town/City.
Shivpur District-Gorakhpur, P.O Jangle Salikram
State Uttar Pradesh. Pin Code. 273014
6. Kumari Anjali aged about 14 years
Daughter of Late Bishun Deo,
House/Bldg. /Apt:u/p 141
Street/Road/Lane: bichhiya jungle
tulsiram, Landmark
near ramleela maidan, Area/Locality/
Sector ward 3,
Village/Town/City. Shivpur,
District-Gorakhpur, P.O
Jangle Salikram, State Uttar Pradesh.
Pin Code. 273014
7. Suhani aged about 12 years
Daughter of Late Bishun
Deo, House/Bldg./Apt:u/p 141. Street/
Road/Lanebichhiya jungle tulsiram,
Landmark near ramleela
maidan. Area/Locality/Sector ward
Village/Town/City. Shivpur,
District-Gorakhpur, P.O.
Jangle Salikram State Uttar Pradesh.
Pin Code. 273014.

.... Applicants

(By Advocate: Shri Saurabh)

Versus

1. Union of India
Through the General Manager,
North East Railway,
Gorakhpur.
2. The Chief Works Shop Manager,
North East Railway,
Izat Nagar, Bareilly.



3. The Chief Workshop Manager (Personnel),
North Eastern Railway,
Izat Nagar, Bareilly.
4. The Chief Workshop Manager (Personnel),
North Eastern Railway,
Izat Nagar, Bareilly.
5. The Deputy Chief Mechanical Engineer (Production),
Disciplinary Authority,
North Eastern Railway Workshop,
Izat Nagar, Bareilly.
6. The Works Manager (Plant),
North Eastern Railway,
Izat Nagar, Bareilly (Disciplinary Authority).
7. Smt. Surati Devi wife of
Sh. Bishun Dev,
Resident of Village Uannopur,
P.O. Jhungiaya Bazar,
District Gorakhpur.

.... Respondents

(By Advocate: Sh. Anil Kumar)

ORDER



Hon'ble Mrs. Pratima K. Gupta, Member (J)

Sh. Bishun Dev, applicant (now deceased) had filed this OA against the impugned order dated 19.12.2006 (Annexure A-2) whereby he was removed from service. This order was affirmed by the appellate authority vide order dated 03/06.02.2007. The applicant filed an OA No.425/2007 *inter alia* challenging the aforesaid two orders. This Tribunal remanded the matter back to the Appellate authority to pass a reasoned and speaking order. Accordingly order dated 14.07.2009 was passed which is also under challenge.

2. This is second round of litigation. Applicant had sought following reliefs through this OA:

- "i) issue suitable order or direction by way of Certiorari quashing the impugned orders dated 14.07.2009, 19.12.2006 and 3/6.02.2007 shown as Annexure-A-1A, A-1 and A-2 to this OA.
- ii) issue suitable order of direction by way Mandamus directing the respondents to treat the applicant continuation in service with all consequential benefits including the Payment of pay and allowances with payment of arrears including 18% Penal interests.



- iii) issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper upon the circumstances of the case of applicant.
- iv) toward the cost of the application to the applicant."

3. During the pendency of the OA, applicant has passed away. An application for substituting the Legal Representatives (LRs) on record, was moved vide MA No.4037/2015 by the second wife of the applicant, Smt. Sheela Devi. The said MA was allowed and applicant was substituted by his second wife and his six children (Applicants No.2 to 7) and Smt. Surati Devi, the first wife of the applicant has also been arrayed as respondent No.7 in the amended memo filed on behalf of the applicants in the OA. None has appeared on behalf of first wife of the applicant, i.e. respondent No.7.

4. The factual matrix, leading to the filing of the present OA, is that the applicant was appointed as Khallasi on 15.12.1969. It is stated that he had an unblemished service record. It is further stated that



applicant wanted to enter into second marriage with Smt. Sheela Devi, the present applicant No.1 and accordingly he sought permission on 18.10.1988 for the same from the respondents. The reason stated to enter into second marriage was that from his first wedlock he had four daughters and he wanted to have a son to continue his heritage.

4.1. It is further stated in para 4 (7-A) of the OA that the second wife of the applicant had approached the family court and there was a compromise deed entered between his second wife and the applicant on 02.08.1995 (Annexure A-7 of the OA). However, on perusal of the said annexure it seems that the averment made in the OA are inadvertently mentioned as second wife though the compromise deed is between the applicant, Sh. Bishun Dev (now deceased) and his first wife (private respondent No.7 in the OA).

4.2 It is further clear from the compromise deed that there was no divorce decree between the applicant and his first wife. The applicant has



entered in his service book the details of his second wife along with sons and daughters excluding his first wife.

4.3 The first wife of the applicant Smt. Surati Devi filed a complaint to the respondents on 24.04.2003 against the second marriage of the applicant seeking maintenance and removal of the applicant from service.

4.4 Thus, the applicant was proceeded departmentally. A charge sheet was issued to the applicant on 22.11.2004 on the alleged misconduct of bigamy. Under Rule 9 of Railways Servants (Discipline and Appeal) Rules, 1968, he was proceeded departmentally. The enquiry officer completed the enquiry proceedings on 30.10.2006 and provided the same to the applicant on 07.11.2006. Applicant responded to the enquiry report. After considering the same, respondent No.5, i.e. the disciplinary authority vide order dated 19.12.2006 awarded the punishment of removal from service.



5. The applicant filed an appeal on 18.01.2007 against the order passed by the disciplinary authority. However, the appellate authority has affirmed the said order of removal from service. Thereafter, applicant filed OA No.425/2007 challenging the punishment of removal from service. This OA was disposed of on 29.04.2009 with the following direction:

"3. Accordingly, Appellate order dated 3/6.02.2007 (Annexure A-1 to the OA), is hereby quashed and set aside and the matter is remitted back for reconsideration to the Appellate Authority, by passing reasoned and speaking order within a period of three months from the date of receipt of a copy of this order."

6. In compliance of the direction of this Tribunal, the Appellate Authority again passed a reasoned and speaking order on 14.07.2009 upholding the punishment of removal from service. Hence the OA.

7. Respondents have filed their counter reply contesting the claim of the applicant. It is stated that on receipt of a complaint from Smt Surati Devi an Inquiry was conducted by the welfare officer and this culminated into the charge sheet dated 22.11.2004 for conducting second marriage with Smt. Sheela Devi



without severing his matrimonial relationship with his first wife Smt. Surati Devi. During the enquiry although the applicant has stated that he has sought permission of the department for the second marriage but in spite of sufficient opportunity he was not able to produce any such proof. Accordingly, the disciplinary authority had passed the penalty order.

8. Heard Sh. Saurabh, learned counsel for applicant and Sh. Anil Kumar, learned counsel for respondents.

9. In view of the facts stated hereinabove and judgment relied upon by the applicant, the case of the applicant is squarely covered by the judgment in OA No.213/2020 passed by the Coordinate Bench of this Tribunal on 10.12.2020, which was upheld by the Hon'ble High Court in **State of Rajasthan and another vs. Pankaj Kumar Chaudhary**, CWP No.3613/2021, vide order dated 19.03.2021 wherein, in similar facts the order of major punishment inflicted upon the applicant was set aside and the matter was remitted back to the department for the



respondents to inflict any punishment other than removal/dismissal.

10. From the above, it emerges that certain facts cannot be denied that the deceased applicant was not divorced from his first wife when he entered into marriage with his second wife Smt. Sheela and that it is not only a criminal misconduct but social misconduct as well.

11. In **Joseph Shine vs. Union of India** (WP (Crl.) No.194/2017, decided on 24.09.2017), the Hon'ble Supreme Court has held as under:

"Throughout history, the State has long retained an area of regulation in the institution of marriage. The State has regulated various aspects of the institution of marriage, by determining the age when an adult can enter into marriage; it grants legal recognition to marriage; it creates rights in respect of inheritance and succession; it provides for remedies like judicial separation, alimony, restitution of conjugal rights; it regulates surrogacy, adoption, child custody, guardianship, partition, parental responsibility; guardianship and welfare of the child. These are all areas of private interest in which the State retains a legitimate interest, since these are areas which concern society and public well-being as a whole.

12. It may not be out of place to say that it shocks the conscience of this Court that the applicant



entered into the second marriage only for the sole reason that his first wife could not bear male child though he had no other complaint against her whatsoever.

13. In the light of the fact that the applicant has since expired, without deliberating on the merits of the case, it will be just and proper that the impugned orders dated 14.07.2009, 19.12.2006 and 3/6.02.2007 are quashed. The matter is remitted back to the respondents to inflict any other punishment other than removal from service on the applicant. However, it is made clear that any monetary benefit that would accrue as consequential benefit to the parties may not be released till the parties submit a succession certificate to the respondents to claim their legitimate right. OA is partly allowed in the aforesaid terms. No orders to costs.

(Pratima K. Gupta)
Member (J)

(Tarun Shridhar)
Member (A)

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