

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A./350/00925/ 2018

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Naran Rout,
Son of Lachhaban Rout,
Aged about 41 years,
Bungalow Peon (since dismissed)
attached to Financial Advisor,
and Chief A/Cs Officer,
CLW, Chittaranjan,
At present residing at Village – Chakpara,
P.O. – Banki,
Dist. – Cuttack,
Orissa, Pin Code – 754008.

..... Applicant.

Versus

1. Union of India,
Through the General Manager,
CLW, Chittaranjan at Burdwan,
Pin 713331.
2. F.A. & C.A.O.,
C.L.W., Chittaranjan,
Dist. – Burdwan, Pin – 713331.

..... Respondents.

For the applicant : Mr. A. Chakraborty, Counsel

For the respondents : Mr. B.P. Manna, Counsel

Date of Order : 16.3.21



ORDER

Per : Bidisha Banerjee, Judicial Member



The applicant, a dismissed bungalow peon has sought for following reliefs:

"8.a) To set aside and quash the impugned order dated 18.5.2018 (A-12) passed by the respondent No. 2 and also order dated 12.3.2010 passed by the appellate authority as well as the enquiry report and punishment order dated 2.2.2008 forwarded under letter dated 5.2.2008 and set aside the order dated 22/28.6.17 and thereafter further directing the respondents to re-instate the applicant in service along with all consequential benefits because all charges was not proved by the trial court;

b) Any other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. His case has a checkered history and this is his fourth journey to this Tribunal. Earlier he had preferred O.A. 493 of 2009 challenging his punishment on the ground that no chargesheet was never served on him. Having found that he had already filed an appeal before the appellate authority on 15.3.2008 which was not disposed of, this Tribunal directed that the appellate authority "shall consider and dispose of the appeal memorandum by a speaking order within a time frame of 3 months from receipt of a copy of this order and communicate the same to the applicant thereafter".

O.A. 1370 of 2010 was preferred being aggrieved by the order of the appellate authority dated 12.03.2010 upholding the punishment of dismissal from service dated 02.02.2008 as communicated by order dated 05.02.2008.

This Tribunal while disposing of O.A. 1370 of 2010, recorded the following:

"6. We have gone through the documents placed on record. We find that the charge against the applicant is bigamy. The main articles of charge against the applicant are as follows:

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"(i) Shri Naran Rout, Bunglow Peon of FA & CAO/CLW/CRJ, has knowingly violated Rule 21 of Railway Services Conduct Rule 1966 while contracting the a marriage under the Special Marriage Act with Susma Kumari Ram (SC), daughter of Shri Ugam Ram, on 15.06.2007 resident of the Othouse of Bunglow No. 2 Ashok Avenue, Chittaranjan while having a spouse living in Village Chakapada, Post-Banki, Dist-Cuttack, State Orissa.

(ii) Shri Naran Rout has knowingly cohabited with Susma Kumari Ram (SC) by inducing in her the false belief that he is her legally married husband when, by virtue of having a spouse already living, the marriage of Naran Rout with Susma Kumari Ram (SC) was devoid of legal sanctity. Hence, Naran Rout has acted in a manner unbecoming for a Railway Servant and, hence, violated Rule 3 (iii) of the Railway Services Conduct Rule 1966."

7. *It appears from the inquiry report that the enquiry officer had sent intimation to the native address of the applicant to appear personally in the inquiry but he did not respond. Accordingly ex parte enquiry was held. Subsequently also during the course of hearing notices were sent to the applicant but he did not appear to defend himself. The applicant also refused to receive the charge-sheet as also other communications sent to him.*

8. *From the inquiry report it also appears that Smt. Susma Kumari Ram, the lady whom the applicant married second time also lodged a police complaint before the Chittaranjan Police Station and a criminal case is pending investigation. It also appears that the applicant moved an anticipatory bail application before the Hon'ble High Court which was rejected and as per the police report he was absconding. During the enquiry witnesses were examined apart from the complaint and it was proved that the applicant has committed the misconduct of bigamy.*

9. *Considering all the disciplinary authority passed a very detailed order discussing all the factual aspects and thereafter passed order of the dismissal from service.*

10. *So far as the contention of the applicant that ex parte was held without giving him an opportunity, reference may be made to the recent decision of the Hon'ble Supreme Court in the case of UOI & Ors. Vs. G. Annadurai reported 2010 (1) SCC (L&S) 278 where the Hon'ble Supreme Court has held that when after repeated opportunities the delinquent does not appear to participate in the inquiry, Ex parte enquiry can be held."*

Thereafter, when the applicant was absolved of the charges under Section 498A of IPC etc. in Session Case No. 118/08, by the Addl. District & Session Judge, Fast Track 2nd Court, Asansol (Arising in connection with Chittaranjan P.S. Case No. 15/07 dated 15.09.07, Under Section 498A, 307, 120B, 495 of I.P.C.) and the

applicant accused under Section 235(1) Cr.P.C. for the commission of offence punishable Under Section 498A, 307, 120B, 495 of Indian Penal Code was acquitted in connection with this case and set at liberty from this case and discharged from the bail bond, he preferred a representation dated 17.4.17 to the General Manager, C.L.W & the Chief Personnel Officer, C.L.W to reinstate him in his former post, pay and scale and to grant all consequential benefits.

He preferred O.A. 1066 of 2017 which was disposed of 20.09.2017, with order as under:

"2. Mr. Banerjee at the outset vehemently opposed the maintainability of this O.A. by drawing out attention to Annexure 'A-10' which has been issued to an advocate in response to a advocate's notice and submitted that a letter not communicated to the applicant by the respondents cannot be treated as an impugned order.

3. We are in agreement with the arguments advanced by Mr. Banerjee. Therefore, we think it to be a fit case as not being maintainable. However, Mr. T.K. Biswas prayed that the applicant may be granted liberty to make a comprehensive representation addressed to respondent No. 2 within a period of 4 weeks and, therefore, we dispose of this O.A. by granting liberty to the applicant to make a comprehensive representation enclosing all the required documents, as advised, to respondent No. 2 within a period of 4 weeks and if a representation is received within 4 weeks then the respondent No. 2 is directed to consider the same as per rules and regulations within a period of 6 weeks from the date of receipt of the representation."

The applicant represented that I was chargesheeted by the department i.e. major penalty charge sheet and after completion of the disciplinary proceedings and punishment was imposed against me i.e. dismissed from the Railway Service.

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The Learned Court of Addl. Dist. & Sessions Judge, Fast Track Court, Asansol in Session Trial No. 68/08 and Session Case No. 118/08 and was disposed of and

date of delivery of judgement was 17.3.2017 and observed that the accused person namely Naran Rout, Sunanda Raut, Pankar Raut, Smt. Kokila Rout, Kinnor Raut are found not guilty under section 125(1) Cr. P.C. for the commission of offence punishable under section 498A, 307, 120B, 495 of the Indian Penal Code.

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The essential ingredients of the offence under section 495 are as follows :-

- (1) The accused had already been married to same person,
- (2) The marriage was availed one (3) the spouse was alive,
- (4) The accused married another person performing all the required essential ceremonies prescribed by law (5) The accused had prior to contracting the second marriage concealed the fact of previous marriage from the newly married person.

In this regard Ld. Addl. Dist. & Sessions Judge, Fast Track 2nd, Court, Asansol was pleased to pass the following order in favour of the applicant. Therefore it is proved that from the order passed by the Addl. Dist. & Sessions Judge that the applicant did not marry during the subsisting of 1st marriage when the charge of bigamy is not proved.

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In the circumstances as stated above I pray before you to set aside and quash the impugned order dated 12.3.2010 passed by the appellate authority as well as the Enquiry report and punishment order dated 2.2.2008 forwarded under letter dated 5.2.2008 and set aside the order dated 22/28.6.2017 and to reinstate the applicant's service along with all consequential benefits because all charges was not proved by the Trial Court.

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The Sr. AFA, for PFA concluded vide his order dated 18.5.2018 that the Appellate Authority advised Sri Rout to produce such documentary evidence as may be available with him which could help in refuting/ setting aside the charges against him. Sri Rout was given sufficient time to produce the evidence. Sri Rout had merely submitted original appeal addressed to the Appellate Authority and a copy of Sri Rout's letter dated: 16.01.2008 addressed to various officials of Accounts Department. Thus Sri Rout failed to produce any evidence which detracts in anyhow from the charge of 'Bigamy' i.e. violation of rule 21 of Railway Service Conduct Rules, 1966. Thus the Appellate Authority disposed the appeal on 12.03.2010 thereby upholding the punishment imposed upon Sri Rout by the Disciplinary Authority.

It is, therefore, evident that action taken under Disciplinary Appeal Rules is independent of any legal action in this case and thus his acquittal from the criminal charges does not mean that, the charges of 'Bigamy' which has been proved through Disciplinary proceedings, has been waived out.

Further, Sri Rout has filed an O.A having no 1370 of 2010 before Hon'ble CAT/Kolkata praying quashing of the punishment order dated: 02.02.2008, enquiry report as well as order of the appellate authority dated: 12.03.2010 upholding the punishment already imposed. The Hon'ble CAT/Kolkata dismissed the OA for not finding any irregularity or illegality in the order of the Appellate Authority. Sri Rout moved to High Court, Kolkata and filed WPCT No. 258/2010 but the same was also dismissed with no order as to costs.

In view of the above in the light of the result of the D&AR proceedings under D&AR Rules, 1968 there is no scope to consider the representation of the

applicant to set aside and quash the order of the Disciplinary Authority dated 02.02.2008 by 'Dismissal from Service' against Sri Rout and order of the Appellate Authority dated 11.3.2010 upholding the order of the Disciplinary Authority.

This issues with the approval of PFA/CLW/Chittaranjan.

3. It is evident from the above that the authority while discarding the acquittal order of a Court of Law dated 17.03.2017 has blindly relied upon an order of this Tribunal in 2010, whereas the authority was required to look into the order passed by the Criminal Court in 2017.

4. As such the impugned order is quashed. The matter is remanded back to the Disciplinary Authority, to issue orders afresh, untrammelled by any previous orders of this Tribunal on the penalty order in disciplinary proceedings, applying his mind independently on the acquittal order of 2017.

Order be issued within three months. No costs.


(Dr. N. Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

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