

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

T.A.No. 780/87

(W.P.No. 12726/81)

Dr.P.S.Kanari.....

.....Applicant

Versus

Union of India and others.

.....Respondents.

Hon'ble Mr. Justice U.C.Srivastava, V.C.
Hon'ble Mr. K.Obayya, A.M.

The applicant was senior scientist assistant in Defence Materials Stores Research and Development Establishment, Kanpur. He was also Secretary, Regional Council (North Zone). According to the applicant it is because of the ~~union~~ activities the superior officers were against him and that is why the applicant was harassed by them. The project in which he was working was snatched and consequently one Dr. Mathur issued 4 charge sheets on 9.3.78 against the applicant making all sorts of charges. Suspension order was also passed. Yet another charge sheet was issued on 5.1.78. The earlier four charge sheets were dropped and ⁱⁿ the last charge sheet board of enquiry was appointed to enquire into various allegations ~~which~~ were in respect of making a ~~false~~ declaration before the Marriage Officer Jhansi for bigamy some 11 years after the marriage is said to have taken place. That incident, according to the respondents also took place in the year 1967. Thus according to the applicant it was a biased allegation. Before the board of enquiry the applicant raised various objections against the same. One of the allegation which was raised by the applicant was that the Director was not a disciplinary authority, the disciplinary authority was the Scientific Advisor and not the ~~xx~~ Director General Research and

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Development Organisation and as such he has no power and jurisdiction to issue chargesheet or to appoint a board of enquiry into the charges ^{and jurisdiction} nor he has power/to issue show cause notice or to ^{was} pass the order of dismissal. The applicant/denied of ~~xxxxxx~~ full opportunity as the Board of Enquiry ~~xxxx~~ did not give full opportunity to defend himself in as much as the witnesses were not summoned for cross examination and defence witnesses were not allowed to be examined and the copy of the brief of the Presiding Officer was not supplied and the department did not allow him to file documents although the same were required to be filed along with the charge sheet and the applicant was not allowed to make defence statement in presence of the defence witnesses and the date was not adjourned even though the defence witnesses met with a serious accident and the disciplinary authority closed the case as well as the defence. The board of enquiry submitted its finding on 11.4.79. It came to the conclusion that the applicant gave a false declaration about the marital status before the Marriage Officer, Jhansi. Thus he is guilty of an act ^{by} becoming a Government servant and secondly that he has contracted marriage with Km. Indira Verma while he was already married with his wife and he was thus contracted another marriage in violation of rule 21 CCS Rules 1964.

u 2. The respondents have denied the allegations of malafide or bias which have been levelled by the applicant and have stated that as a matter of fact the applicant was appointed by the Director that is the post which was held by him and as such he had right to appoint a board of enquiry and appoint the disciplinary authority even if it is said that relevant Scientific-

fic Advisor was the appointing authority and he delegated powers to the Director. The respondents in their reply has pointed out and has stated that the facts are so ~~patent~~ that there were clinching evidence and even otherwise facts regarding the second marriage are very apparent and patent. The applicant who joined the Research Development Laboratory as Junior Scientist Assistant on 30.8.1961. On that date he gave a declaration that he was married and only one wife living with him. The Marriage Officer, Jhansi vide letter dated 31.3.67 wrote the Director Research Laboratory, Kanpur that the applicant is guilty under section 5 of the Hindu Marriage Act wherein certain details are required to be furnished and authenticated by the Director so that the marriage of the applicant may be registered with Km. Indra Verma. The marriage status of the applicant is as the letter shows to be a bachelor. The Director informed him that the record shows that he was already married. The applicant was asked by the Director vide letter dated 10.4.67 that as a fact he was married at the time of entering into his service. No reply of the same was given by the applicant. There was amalgamation of the establishment that the applicant was working in the other part. It came to the notice of the employers that certain action regarding his marital status being incomplete as he has not been replied to the letter dated 18.6.67 referred to above. The Marriage Officer Jhansi was ~~intended~~ ^{asked} to confirm the correctness whether the marriage ceremony as applied by the applicant has been solemnised or not. The copy of the marriage certificate was obtained on 12.10.77 and the certificate indicates that the applicant was married with Km. Indra Verma

and the marriage was solemnised and registered in presence of the Marriage Officer, Jhansi. The District Magistrate, Almorah who was asked to intimate the family details of the applicant vide letter dated 7.1.78 informed that Smt. Hasli Devi is the married wife of the applicant and resides with her 3 children, two daughters and one son and his mother, Smt. Rukmani Devi who is alive also resides at his home address. After receipt of said information further checking was done and it was revealed that the applicant has given further details of the family members on 24.11.72 in which the name of his wife ~~Smt. Indra Devi~~ was shown as Smt. Indra Verma, three children ^{Smt. Rukmani Devi} (mother) and K. Bhagwati Devi, sister was given. From these facts it was concluded that the applicant has contracted a second marriage during life time of his first wife without obtaining permission from Ministry of Defence and the declaration which was given by him was wholly incorrect and that is why the charge sheet was given to him.

3. The respondents have refuted the allegations made by the applicant and have stated that full opportunity was given to the applicant and it was not a case in which there could have been any denial of opportunity and whatever opportunity was desired by the applicant and could have been given was given and availed. The fact was proved beyond shadow of doubt and the report of Board of Enquiry was examined carefully and dispassionately. Even in his written statement dated 31.1.1979 and 2.2.1979 he clearly admitted " it is correct that while I (Dr. P.S. Kanari) on joining into service in the year 1961 I was married and was then having one wife living."

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4. According to the respondents the complaint regarding non giving of full opportunity is vague and has been made with a view to make it a ground for attacking the action taken against him although he never and even now has not stated that his first wife is not alive or that she was divorced before he contacted second marriage. He has not even given the age of children which by itself would have been a proof to indicate whether children were born from first wife or second wife. According to respondents minor pitfalls here and there do not change legal and factual position. In the rejoinder affidavit also the factual position as stated by the respondents has not been challenged though other technical pleas have been taken the plea that denial of opportunity to defend stands negatived. In raising such a plea he has not stated and if he would have been giving more opportunity he would have proved to ~~negativate~~ ^{negate} (?) a particular conclusion. The main contention of the learned counsel for the applicant was that the appointing authority of the applicant was the Scientific Advisor of the Government to the Ministry of Defence as such punishment order which has been passed by a Subordinate Authority. The schedule of C.C.S. rules also provides that though scientific Advisor has been shown as appointing authority of such posts but powers of appointment have been conferred upon the Director also under a notification. The Director ^{has power} to make appointment of Class III and Class IV employees. It is a settled position that if the appointment has been made by the authority to whom power have been delegated it is he who will be the appointing authority for the purposes of such appointment. In the instant case the applicant was appointed by the Director who was the appointing

Authority. Rule 2 of the CC S rules appended with rule 2(a) as follows:-

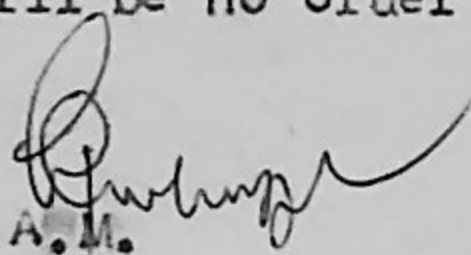
- (i) the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the service in which the Government servant for the time being included, or
- (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
- (iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, or
- (iv) Where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that service or to any grade in that service or to that post, whichever authority is the highest authority.

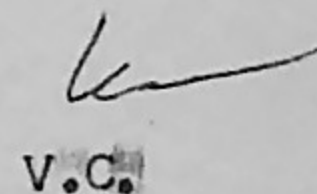
5. This matter came for consideration Hon'ble Supreme Court in the case of Scientific Adviser to the Ministry of Defence and others Vs. S. Daniel and others reported in 1991 Supreme Court Cases (L&S) 355. The court observed that both the categories contemplated by Rule 2(a) viz the authority empowered to make appointments and the authority who actually made the appointment. In the case of Roop Chand Vs. State of Punjab, A.I.R. 1963 S.C. 1503 and it was observed that the action of the delegate can be treated as that of the principal himself. Applying the ratio of the above case to the facts of our case,

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it can be said that the orders of appointments made by the Director, by reason of statutory delegation made by the Scientific Adviser under Rule 9(1), are those of the Scientific Adviser himself, on the basis of that the exercise of power delegated to an authority may be treated as an exercise of the power by the principal himself. Thus the applicant who was appointed by the Director, action against him has been taken by the Director and the Director being the Disciplinary Authority the plea raised by the learned counsel fails (2). We have already rejected the plea of the applicant that reasonable opportunity of hearing to prove "was not given". Thus there are no grounds for interference in this case ~~as such~~ as such the application has got to be rejected. It is for the department to consider him for re-employment being a Scientist who because of this act has got out of service for one mistake.

6. The application stands dismissed and there will be no order as to the costs.


A.M.


V.C.

Dated: Allahabad
28th July 1992

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