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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 17th DAY OF November, 2009)

PRESENT:

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MR. S.N SHUKLA, MEMBER - A**

ORIGINAL APPLICATION NO. 656 of 2002

(U/s, 19 Administrative Tribunal Act.1985)

Brij Behari S/o Shri Chiman Lal, aged about 45 years,
Resident of Quarter No. 75-B, Railway North Colony,
Cantt. Road, Bareilly Jn.

.....Applicant

By Advocate: Shri S.S. Sharma
Shri Sanjay Singh.

Versus

1. Union of India owning and representing 'Northern Railway' notice to be served to the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Engineer Bridge Engineer, Northern Railway, Baroda House, New Delhi (The Revisional Authority).
3. The Deputy Chief Engineer/Bridge Line, Northern Railway, Lajpat Nagar-1, New Delhi -24. (The Appellate Authority).
4. The Executive Engineer/Bridge Line, Northern Railway, Lajpat Nagar-1, New Delhi -24. (The Disciplinary Authority).
5. The Bridge Inspector, Northern Railway, Moradabad (The Enquiry Officer).

..... Respondents

By Advocate: Shri P Mathur.

ORDER

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

Heard learned counsel for the parties. Perused the pleadings as well as documents annexed therewith.

2. Applicant as an employee of Respondent Railway Department. He was served with a chargesheet on the ground

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of having contracted second marriage while his first wife alive.

It has come on record that the applicant was employed as 'Painter/Writer'. Applicant in his revision petition dated 12.2.2001 (Annexure A-6/Compilation II) had taken various pleas bringing on record certain circumstances (viz. his caste, tradition and convention of his community). He has referred to the decision of 'PANCHAYAT'. Reference may be made to Annexure R-2 (copy of statement of the Applicant) to the counter affidavit filed by the Respondents which show that Applicant got married with one Pushpa Devi in the year 1970-71 and thereafter got married with Ardhesh Kumari in the year 1985-86; he has five children from each of the said wedlock and they are dependent on the Applicant; second wife is made entitled to Rs.1300/- per month as maintenance, awarded by Family Court (Order/Judgment of Family Court has not been brought on record for our perusal).

3. We have gone through the impugned orders and find that order of removal has been passed by way of punishment on the ground of second marriage (with Ardhesh Kumari) while his first wife (Pushpa Devi) is alive in exercise of power conferred under Railway Servants (Discipline and Appeal) Rules 1968.

4. Learned counsel for the Respondents is unable to place Statutory Rule indicating that in case a delinquent employee has entered into second marriage (during lifetime of first wife), the only option/consequence is 'removal from service'.

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5. Rule 18, placed before us reads:-

"18. No Railway servant shall enter into, or contact a marriage with a person having a spouse living and having a living spouse shall enter into or contact, a marriage with any person. In other words it means that no railway servant who has a wife shall contact another marriage without first obtaining the sanction of Government and no female Railway servant shall marry any person who has a wife living without obtaining the sanction of Government".

(See Bahari's Railway Establishment Rules & Labour Laws by K.P. Sharma particular page 639)

6. A perusal of aforesaid Rule shows that second marriage is permissible subject to seeking prior sanction from the Employer. This shows that under mitigating/compelling circumstances, Government may allow 'second marriage'. It is not in dispute that the applicant did not obtain prior sanction entering into the marriage with Ardhesh Kumari but relevant circumstances (as noted above) have been ignored and there is no reference to the same showing application of mind.

7. In view of the above, we set aside the impugned orders dated 25.8.2000, 20.1.2001 and 11.6.2001 (Annexures A-1, A-2 and A-3/Compilation I) with direction to the concerned Authority to pass afresh orders in the light of observation made above.

8. O.A. allowed. No costs.

Member (A)

Member (J)

Manish/-