

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 587 OF 1999

Cuttack, this the 16th day of April, 2001

Sri Siba Das

....Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Govind Nath S.
(GOVIND NATH S.)
VICE-CHAIRMAN
16.4.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Siba Das, aged about 43 years, son of late Kalandi Das, Driver Loco, S.E.Railway, Kharagpur, At present residing at Village Usuma, P.O-Sankhatras, P.S-Sadar, District-Cuttack (Orissa).....
Applicant

Advocates for applicant - M/s P.V.Ramdas
D.R.Rath

Vrs.

1. Union of India, represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta- 43.
2. Assistant Divisional Railway Manager, South Eastern Railway, Kharagpur, West Bengal.
3. Senior Divisional Mechanical Engineer, South Eastern Railway, Kharagpur, West Bengal
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Respondents

Advocate for respondents - Madam S.L.Patnaik

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Jm.
In this application, the petitioner has prayed for quashing the order dated 27.5.1999 (Annexure-5) dismissing him from service on conclusion of major penalty proceedings against him and for his reinstatement in service with all consequential service benefits.

2. The respondents have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder reiterating his prayers in the OA. We have gone through the pleadings of the parties and have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Madam S.L.Patnaik, the learned Railway Advocate for the respondents.

3. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that while the petitioner was working as Railway Driver under the respondents at Kharagpur, major penalty proceeding was initiated against him in the memo at Annexure-1 in which the solitary charge was that he has contracted a second marriage with one Alpana Das vide Hindu Marriage Register No. 768 dated 17.8.1988 though his first wife is still alive. The applicant in his explanation at Annexure-2 has stated that his first wife Naina Das was alive and he has two sons and two daughters through the marriage. But as the applicant was staying at Kharagpur and his wife and children were staying at the village, in order to maintain conjugal life, he had accepted Alpana Das as concubine with the consent of his wife Naina Das. He has further stated that when he demanded Alpana Das to come to his village to reside with the other family members, relations of Alpana Das threatened him and forced him to sign some documents in favour of Alpana Das. He has also taken the stand that Alpana Das is his concubine and keeping a concubine is not an official misconduct. An enquiry was conducted into the charge, and the inquiring officer held the charge as proved. On receipt of copy of the enquiry report, the applicant submitted a representation at Annexure-4 and thereafter the impugned order dated 27.5.1999 (Annexure-5) was passed dismissing him from service. The applicant has filed an appeal at Annexure-6 and has also sent a reminder, but no order has been passed on his appeal petition till filing of the O.A.

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4. Before considering the submissions made by the learned counsel for the petitioner, it has to be noted that in a disciplinary proceedings the scope of interference by the Tribunal is somewhat limited. The Tribunal can interfere in such case only if rules of natural justice have been violated or reasonable opportunity has not been given to the delinquent official during the disciplinary proceedings, or if the finding is based on no evidence is patently perverse. The submissions made by the learned counsel for the petitioner have to be considered in the context of the above well settled position of law.

5. The first submission made by the learned counsel for the petitioner is that proper enquiry was not conducted by the inquiring officer because on the date of enquiry there were lot of disturbances at the place where the enquiry was held and ultimately with the help of Railway Police personnel, law and order could be maintained and enquiry could be conducted. In view of this, it has been urged that the enquiry has not been properly held. We are unable to accept this contention because from the report of the inquiring officer it is found that while the enquiry was going on 10.3.1999, the applicant, Alpana Das and her father D.C.Chakraborty were present. One Ujjal Chakraborty, the brother of Alpana Das appeared before the inquiring officer with some anti-social persons, abused the inquiring officer, threatened him with a revolver and directed him to stop the enquiry. He also threatened to shoot the inquiring officer. The inquiring officer has noted that the enquiry was conducted with the help of Railway Protection Force staff and officers. From this it is clear that

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disturbance was created on 10.3.1999 by the brother of Alpana Das. The applicant has not stated how because of this disturbance he was unable to present his defence. As a matter of fact, from Annexure-R/1 we find that the statement of the applicant was recorded on 22.2.1999 before the date when the disturbance took place. In view of this, we hold that this contention is without any merit and the same is rejected. Besides the above, the petitioner has not urged any other ground with regard to denial of reasonable opportunity or violation of the principles of natural justice. In view of this, it must be held that the enquiry was conducted fairly.

6. The second contention of the learned counsel for the petitioner is that the finding of the inquiring officer is based on no evidence. Along with the chargesheet the Marriage Registration Certificate showing the marriage of the applicant with Alpana Das was supplied to the petitioner. The petitioner, as earlier noted, had taken the stand in his explanation that Alpana Das is his concubine. But during his examination on 22.2.1999, a xerox copy of which is at Annexure-R/1 and which has been signed by the applicant on the same day, the applicant has taken the stand that he had married Alpana Das. He took the stand that he had been converted into Islam and as a muslim he is permitted to marry two or three times as per Muslim law. The inquiring officer has held that the applicant has given no report to the departmental authorities that he had ever been converted into Islam. Moreover, under Rule 21 of the Railway Services (Conduct) rules, 1966, no Railway servant, having a spouse living, shall enter into, or contract, a

marriage with any person. It is further provided that the Government may permit a railway servant to enter into, or contract, any such marriage, if it is satisfied that such marriage is permissible under the personal law applicable to such railway servant and the other party to the marriage. In the instant case, there is nothing on record that the applicant had ever been converted into Islam. There is no averment that he had applied for permission to marry for the second time after getting converted, if at all, into Islam, and in any case the second wife is a Hindu and could not legally contract marriage with the applicant who has a spouse living. The other aspect of this argument is that it has been submitted by the learned counsel for the petitioner that the marriage certificate is not conclusive proof to establish the second marriage. It has to be proved by independent witness that the second marriage was actually performed. For one thing, in departmental proceedings strict rules of evidence are not applicable. Moreover, one L.R.Slundey, who was also working as a Driver, has given a statement, copy of which is at Annexure-R/5, stating that he attended the civil marriage ceremony of the applicant and after the marriage he was also called by the applicant to court to be a witness to his court marriage and accordingly he was a witness to the court marriage. In the face of all these records, it cannot be held that the finding of the inquiring officer is based on no evidence. This contention of the learned counsel for the petitioner is accordingly rejected.

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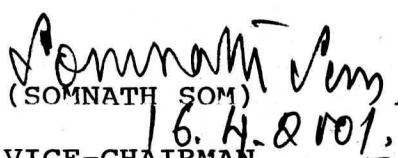
7. The third submission made by the learned counsel for the petitioner is that after getting the report of the inquiring officer, the applicant filed a representation making elaborate submissions with regard to the finding of the inquiring officer, but the disciplinary authority in his impugned order has not taken note of these submissions and has not considered them. In the instant case, we find that the applicant in course of his examination on 22.2.1999 had admitted his second marriage and put up a false plea of having been converted into Islam. In view of this, we find no illegality in the order of the disciplinary authority. Moreover, the disciplinary authority in the order at Annexure-5 has specifically mentioned that he has carefully gone through the explanation of the petitioner on the enquiry report, and the explanation of the applicant is not acceptable. In view of the above, it cannot be held that the order of the disciplinary authority has been passed without application of mind.

8. In the result, therefore, we hold that the Application is without any merit and the same is accordingly rejected but without any order as to costs.

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(G.NARASIMHAM)

MEMBER(JUDICIAL)

16th April,2001/AN/PS


(SOMNATH SOM)
VICE-CHAIRMAN
16.4.2001.