

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A.468/04

...TUESDAY...this the 14th day of February, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

V.Purushothaman, aged 43,
S/o Kandan Vava,SC No.24571,
Light Vehicle Driver B
Transport Operation Maintenance Driver,
VSSC, ISRO, residing at
77/22, VSSC Housing Colony,
Pallithura PO, Thiruvananthapuram.Applicant

(By advocate Mr.Sasidharan Chempazhanthiyil (rep)

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- 1 Senior Head, Personnel and General Administration,
VSSC, ISRO.
- 2 V.Gopi, Inquiry Officer,
(Administrative Officer)
Mechanism and Vehicle Integration
Testing, Valiamala
Thiruvananthapuram.47.
- 3 Director, VSSC, ISRO
- 4 Union of India, rep by its Secretary
Department of Space, Bangalore.Respondents

(By Advocate Mr.T.P.M. Ibrahim Khan,SCGSC)

The application having been heard on 1.2.2006, the Tribunal on 14.
2.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed the present OA seeking a direction to the respondents to keep in abeyance all further proceedings pursuant to the Annexure.A1 Memorandum dated 30.1.04 by which he has been served with the following article of charge:

"Shri V.Purushothaman,SC No.24571,LVD-B,TOMD husband of late Ambika Purushothaman, SC No.20298, Safaiwala B, GAD, who is in receipt of family pension, contracted remarriage with Smt.Ajitha S, Lakshamveedu No.19,Station Kadavu, Kazhakuttam PO, Trivandrum without intimating the same to the competent authority and thereby defrauded the Government by drawing family pension.

By his above act ,Shri Purushothaman has violated the provisions of Rule3(1)(i) and (iii) of CCS (Conduct) Rules, 19864."

2 The applicant is working with the Vikram Sarabhai Space Centre (VSSC for short),Trivandrum as Light Vehicle Driver and he is residing at Qr.No.77/22 of VSSC Housing Colony, Pallithara, Trivandrum. His wife Ambika Purushothaman who was working with VSSC as Safaiwala expired and the applicant is in receipt of family pension. The contention of the respondents is that one Smt.Ajitha.S, Lakshamveedu No.19, Station Kadavu, Trivandrum informed them, vide her letter dated 6.3.03, that she got married to the applicant on 9.5.2000. In support of her claim she furnished copies of marriage certificate issued from Mishra Vivaha Sangham,Trivandrum and from Sree Narayanan Dharma Paripalana Yogam, Kulathoor.

(Signature)

Branch,Trivandrum alongwith a joint photograph. She alleged that the applicant deserted her after 20 months of cohabitation after their marriage on the ground that re-marriage makes him ineligible for drawing family pension benefits which have been granted to him w.e.f. 6.10.98 consequent on the death of his wife Smt.Ambika Purushothaman, Safaiwala, VSSC. She had also informed that she filed a case before the Family Court,Trivandrum in this regard.

3 The respondents submit is that the applicant has never intimated the fact of his re-marriage nor discontinued drawing the family pension. According to sub rule 6(1) of Rule 54 of the CCS (Pension) Rules, 1964 family pension ceases to be available to the widow/widower with effect from the date of her/his remarriage. The applicant contracted marriage while he has been in receipt of family pension without intimating the same to the competent authority. He was directed to explain why action as deemed fit should not be initiated against him for drawing family pension without intimating the same to the competent authority. He totally denied the existence of any such marriage with Smt.Ajitha. The respondents, thereafter directed him to produce the details of the case pending in the Family Court in relation to his re-marriage with Smt.Ajitha. He has just submitted a copy of the written statement filed by him before the Family Court in MC 371/03. According to the respondents, the marriage records forwarded by Smt.Ajitha was sufficient to come to the conclusion that he contracted marriage with her without intimating

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the same to the competent authority when he has been in receipt of family pension from the department and thereby defrauded the Government by drawing family pension and the said action was in violation of Rule 3(1)(i) and (iii) of the CCS (Conduct) Rules, 1964.

4 The Applicant was served with the aforementioned Memorandum dated 30.1.04. He had made a representation to the respondents not to proceed with the departmental inquiry as the matter in question is pending before the Family Court. According to him the basic question to be decided is the alleged remarriage which he denied and the same is under consideration of the Family Court. The article of charge issued to him by the respondents is also on the same alleged re-marriage. The respondents rejected his representation vide the impugned Annexure A2 letter dated 8.2.04 stating that the proceedings pending before the Family Court are independent of the departmental proceedings initiated against him as the departmental proceedings was initiated for violation of Rule 3(1) (i) and (iii) of the CCS (Conduct) Rules which is not the subject matter of the maintenance suit before the Family Court.

5 We have heard the learned counsels on both sides. The only question to be decided is whether the respondents can continue with the departmental proceedings during the pendency of the proceedings pending before the Family Court in the given facts and circumstances of the case. The applicant has relied upon the judgment of the Hon'ble High Court of Kerala in Jaladharan Vs.

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District Transport Officer, Trivandrum and others, 1996 KLJ 673. In that case the petitioner was a Driver in the Kerala State Road Transport Corporation (KSRTC for short). He was kept out of duty by the corporation for the reason that he neglected to maintain a person who claims to be his wife. The person complained to the District Transport Officer that she was being neglected. On the basis of certain documents produced by the person, the District Transport Officer came to the above clear conclusion that the petitioner was the husband of the complainant and issued a show cause notice asking him why he should not be removed from service. The contention before the Court on behalf of the petitioner was that in a case of this nature when there is a dispute as to the status of a government employee, whether he was the husband or not of the person claiming to be his wife, the matter should be left to be decided by the civil court having jurisdiction in the matter. If this is not done, as a result of the domestic inquiry the status may get determined. At any rate, the conclusions reached in the departmental inquiry would be prejudicial to the interest of the government servant. The Hon'ble Court agreed with the said contention and held that it is necessary for the purpose of enforcing discipline and even for maintaining the status of Government employees the government should have full authority to deal with the government employees in all their conduct for the discharge of their duties as a Government servant but there must be a limit and it shall not extend to the cases of determining the

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important question such as the relation between the government employee and an alleged wife. This must be definitely left to the determination of the courts of law. Therefore, the Hon'ble Court has held that no inquiry should have been conducted by the District Transport Officer or any conclusion could have been reached by him on the complaint made before him regarding the question whether the petitioner was the husband of the complainant. Rather, the complainant should have been advised to approach the court and if there was a decree passed, the same should have been relied on for the purpose of further action against the petitioner.

6 The question of staying the departmental proceedings pending criminal case has been considered by the Hon'ble Supreme Court in a number of cases. In State of Rajasthan V. B.K.Meena, 1996(6) SCC 417 the Apex Court has considered the desirability or advisability of staying the disciplinary proceedings pending criminal proceedings/case against the delinquent officer. A three Judge Bench of the Apex Court in Depot Manager,A.P. State Road Transport Corporation V. Mohd. Yousuf Miya and others, 1997(2) SCC 699 followed the judgment in Meena's case (supra) and held that it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. It has been further held that what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his

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defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In Capt. M Paul Anthony Vs. Bharat Gold Mines Limited and another, JT 1999(2) SC 456, the Apex Court has again held that the factual situations would govern the question whether departmental proceedings should be kept in abeyance during the pendency of criminal case or not. In para 22 of the said judgment, the conclusions which are deducible from various earlier decisions were summarized and they are as follows:

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the

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pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

7 The Hon'ble Supreme Court in all these cases has held that there cannot be any straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.

8 Considering the facts and circumstances of the present case, we are of the opinion that the departmental inquiry would seriously prejudice the delinquent applicant in his defence in the pending case *it is not similar to it* before the Family Court and ~~it falls within the category of one which~~ has been decided by the Hon'ble High Court of Kerala in case of Jaladharan (supra). The basic question for determination is the alleged re-marriage of the Applicant with Smt. Ajitha. The matter is already before the Family Court, Trivandrum. It is not the case of the respondent that the case is getting delayed because of the dilatory tactics of the Applicant. The consequence of re-marriage has also been stated in the statement of imputation of misconduct served on the applicant vide Annexure.A1 Memorandum. In a departmental proceedings it cannot be determined whether a person has

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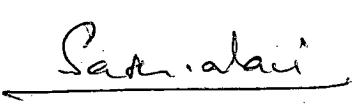
contracted marriage or remarriage. It has to be decided only by a competent civil court on the basis of evidence adduced before it.

9 In view of the above facts and circumstances of the case, the action of the respondents to initiate disciplinary proceedings against the applicant on the allegation of re-marriage is premature. It has to wait for the outcome of the case pending before the Family Court. If the decision of the Family court goes against the Applicant, of course it goes without saying that he will have to face the consequences and the respondents will have the jurisdiction to recover the loss, if any, occurred on that account and also to take appropriate departmental proceedings against him under the rules. Therefore, the OA succeeds. The impugned AI Memorandum shall be kept in abeyance till the disposal of the petition for maintenance No.M.C. 371/2002 by the Family Court, Thiruvananthapuram. It would be in the interests of both the parties that the case pending before the Family Court is finalized at the earliest. There is no order as to costs.

Dated this the 4th day of February, 2006


GEORGE PARACKEN
 JUDICIAL MEMBER

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SATHI NAIR
 VICE CHAIRMAN