

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
NEW BOMBAY BENCH,  
NEW BOMBAY.

ORIGINAL APPLICATION NO.8/85

Shri Adik Nivriti Lade,  
Naval Armament Depot Colony,  
Karanja,  
Uran.

... Applicant.

V/s.

1. Union of India,  
Ministry of Defence,  
New Delhi.
2. The Chief of the Naval Staff,  
Naval Headquarters,  
New Delhi 110 011.
3. The Flag Officer Commanding-in-  
Chief, Headquarters,  
Western Naval Command,  
Bombay.
4. The Naval Armament Supply Officer,  
Naval Armament Depot,  
Karanja (Uran).

... Respondents.

Coram: Shri J.G. Rajadhyaksha, Hon'ble Member (A)  
Shri M.B. Mujumdar, Hon'ble Member (J)

Appearances:

Shri C.S. Thakore,  
Advocate for the  
Applicant.

Shri J.D. Desai,  
(for M.I. Sethna,  
Advocate) for the  
Respondents.

ORAL JUDGMENTS

Date:27.8.1987

This application is filed under section 19 of the Administrative Tribunals Act, 1985 challenging the order of penalty by which <sup>in the</sup> applicant is removed from service.

2. The applicant was appointed as Unskilled labourer in Naval Armament Depot, Karanja. He worked in that capacity upto 29.3.1982 and on that day he was promoted

...2.

as Ammunition Repair Labourer Grade II. He was working in that capacity till he was removed from service on 16th May 1985. One Shri N.B. Veer made an application dated 30th September, 1980 to the Naval Armament Supply Officer i.e. Respondent No.4 stating inter alia that his daughter Vishranti was married to the applicant in 1974, but had come to know that the applicant had married another girl from Bombay without divorcing his first wife i.e. Vishranti. Shri N.B. Veer, therefore, requested that necessary departmental action may be initiated against the applicant. Thereafter, an explanation was called for from the applicant and after making some enquiry a charge was framed against the applicant for contracting a plural marriage without divorcing his first wife, Vishranti. According to the charge the applicant had violated Rule 21(2) of the Central Civil Services (Conduct) Rules, 1964.

3. One Shri Y.P. Rao, Naval Armament Supply Officer (O.G.) was appointed as Enquiring Authority. One Shri V.B. Devkar, Office Superintendent was appointed as Presenting Officer and the applicant appointed Shri N.C. Vishwanathan, SK as his Defence Counsel. During the enquiry, no witness was examined. However, the Presenting Officer relied on the following documents:

- (a) Family particulars submitted by Shri A.N. Lade on 26.06.75.
- (b) Family particulars submitted by Shri A.N. Lade on 04.07.79,
- (c) Explanation/declaration of Shri A.N. Lade dated 11.11.80 and 14.07.82.
- (d) Tehsildar, Karad letter ADM/254/82 dated 08.03.82,
- (e) Circle Inspector, Karad letter dated 10.02.83,
- (f) Marriage registration Certificate from Gramvikas Adhikari, Virwade Taluka, Karad,

- (g) List of Certificate of marriage of Shri A.N. Lade,
- (h) Declaration of Smt. Vishranti Adik Lade,
- (i) Superintendent of Police, Alibag letter  
LCB/83/1700 dated 29.06.83.

4. Relying mainly on the report of the Superintendent of Police, Alibag, the Enquiring Authority held that the charge framed against the applicant was proved. On the basis of that report, the disciplinary authority i.e. Commodore, Chief Staff Officer(PLA) imposed the penalty of removal from service on the applicant from the date of the order i.e. 2nd May, 1985. However, actually he was removed from service on 15th May, 1985. Against that order the applicant had preferred an appeal, but that was rejected by an order dated 12th September, 1985. Though reasons are given in that order, no personal hearing was given to the applicant. The applicant has filed the present application on 2nd December, 1985 challenging both these orders.

5. The respondents have filed their exhaustive reply along with relevant documents. The applicant has also filed his rejoinder. We have heard Mr. Thakore, the learned advocate for the applicant and Mr. J.D. Desai (for Mr. M.I. Sethna learned counsel) for the Respondents.

6. The Enquiring Authority's report is at pages 52 to 59 of the application. In para 13 of his report he has discussed the documents which were produced before him. We may point out that the applicant had given particulars regarding his family on two occasions. The first was on 26.6.1975 i.e. some time after he joined service. Therein he had given the name of his wife as Vishranti who was then aged 20 years, along with 6 other members of his family. The second time when he was required to give his particulars was on 4.7.1979. In that information he had given the name of his wife as Vasanti, aged 19 years. Though there is a difference in the name of his wife as well as her age in these two statements,

that need not detain us because according to Respondents the name of the second wife of the applicant was Tai daughter of Sandhu Khandekar. In the explanation given by the applicant he had denied that he had contracted a second marriage. The report of the Tahsildar dated 8.3.1982 shows that the applicant had left his married wife and she was staying with her parents. The report did say that the applicant had contracted a second marriage, but no particulars were given. The Enquiry Authority had chosen not to rely on that report. The report of the Superintendent of Police, Alibag dated 29.6.1983 shows that the applicant had married one Tai Sandhu Khandekar, resident of Bombay in 1980 and she was having one child, ~~of~~ one year old. The report further shows that she was staying with the applicant under the name of Smt. Nanda Adik Lade. But the report clearly shows that it was made on the basis of the enquiry conducted through the Police Inspector of Uran.

7. We have gone through the report of the Enquiring Authority and the papers of enquiry. We find that except the report of the Superintendent of Police, Alibag, there is no other document to show that the applicant has contracted a second marriage with Tai in 1980. As already pointed out that report was made on the basis of some enquiry made by the Police Inspector of Uran. No oral evidence was laid before the Enquiring Authority. If the Presenting Officer so wanted, he could have examined either the alleged second wife of the applicant or some of her relatives. Even the father of Vishranti on whose complaint the Enquiry was started by the respondents was not examined. Hence the point that we are required to decide is whether the findings of the Enquiring Authority that the charge was proved based on the report of the Superintendent of Police, Alibag is proper and legal.

8. The Supreme Court has held in M/s Barailly Electricity Supply Company Limited V/s The Workmen and others 1971(2)

SLR 617 :-

"But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other <sup>hand</sup> ~~hand~~ what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a court or a Tribunal the questions that naturally arise <sup>are,</sup> ~~is,~~ ~~if it is~~ a genuine document, what are its contents and are the statements contained therein true".

The above passage is quoted with approval by the Supreme Court in Union of India V/s. Sardar Bahadur, 1972 SLR 355.

As there is no scope to dispute the <sup>above</sup> principles, ~~laid down in the above~~, we do not think it necessary to refer to other decisions of the Supreme Court on this point.

9. Relying on the above principles, we hold that the Enquiring Authority was not justified in relying on the report of the Superintendent of Police, Alibag dated 29.6.1983. We may point out that the applicant has from the beginning denied that he has contracted a second marriage. It is true, as pointed out by the Enquiring Authority, that the applicant took different stands regarding his first wife. But that is not material while considering whether the applicant has contracted a second marriage or not. We are, therefore, constrained to set aside the impugned order passed by the Disciplinary Authority on 2nd May, 1985, on the basis of the Enquiry Authority's report.

10. The applicant has also challenged the order passed by the Appellate Authority on 12.9.1985. Though the order

gives reasons for upholding the findings of the Enquiring Authority it does not show that the applicant was heard before deciding the appeal. In view of the judgment of the Supreme Court in Ramchander V. Union of India, A.T.R.1986 S.C.252, affording an opportunity of personal hearing to the applicant was absolutely necessary. On this ground the judgment of the Appellate Authority is liable to be set aside. We do so though that is not necessary when we are setting aside Enquiring Authority's finding on the ground that it was not based on legal evidence.

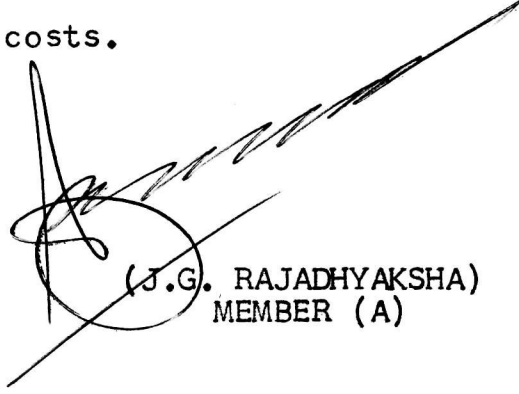
11. The applicant is removed from service w.e.f. 2nd May, 1985. As the order by which he is removed from service is being set aside by us, he will be entitled to reinstatement with all back wages. At the same time we propose to give liberty to the respondents to hold a fresh enquiry against the applicant on the same charge, if deemed fit.

12. In the result we pass the following orders:

- i) The finding of the Enquiring Authority that the charge framed against the applicant is proved is hereby set aside.
- ii) The order of penalty passed on 2nd May, 1985 by the Disciplinary Authority i.e. Commodore, Chief Staff Officer P(A) as well as the order of the Appellate Authority passed on 12th September, 1985 i.e. Vice Admiral, Flag Officer Commanding-in-Chief, are hereby quashed and set aside.
- iii) The respondents shall forthwith reinstate the applicant to the post of Ammunition Repair Labourer Gr.II w.e.f. 15th of May, 1985 with all back wages and consequential benefits due to him according to the rules, without any break in service.
- iv) The respondents will be at liberty to hold a

fresh enquiry against the applicant on the same charge on which the departmental enquiry was held against him previously.

v) Parties to bear their own costs.

  
(J.G. RAJADHYAKSHA)  
MEMBER (A)

  
(M.B. MUJUMDAR)  
MEMBER (J).

M.P.No. 245/89 for  
fixing the date of  
hearing. (at Flag 'A')  
fixed on 31/3/89.

SS4  
20/3/89