

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

Original Application No. 440/86.

Shri V.G. Bagul,  
Naval Civilian Housing Colony,  
Building No. Q-4, Room No. 28,  
Pawai,  
Bhandup,  
Bombay - 400 078.

... Applicant

V/s.

1. Admiral Superintendent,  
Naval Dockyard,  
Lion Gate,  
Bombay.
2. The Flag Officer Commanding-in-Chief,  
Western Naval Command, Shahid Bhagat  
Singh Road, Fort,  
Bombay.
3. The Union of India.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil.

Appearances:

1. Mr. N.S. Waghmore,  
Advocate for  
the applicant
2. Mr. J.D. Desai,  
(for Mr. M.I. Sethna)  
Counsel for the  
Respondents.

JUDGMENT:

(Per Shri B.C. Gadgil, Vice-Chairman)

Dated: 11.09.1987.

This application was in the beginning heard by the Bench comprising of Shri J.G. Rajadhyaksha, Member(A) and Shri M.B. Mujumdar, Member(J). They differed in their opinion and hence a reference was made to the Chairman. The Chairman passed an order that the case be heard by me on the points of difference. It is in this way that the matter was placed before me for hearing.

2. Before considering the points of difference, I would briefly state a few facts. The applicant was working as a Shipright with the Naval Dockyard. At the time when

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he entered service, he gave necessary information about his family members by stating that Drupadabhai was his wife. This was done with a view to nominate her as a person to have a right to receive the Provident Fund amount in accordance with the Provident Fund Rules. It appears that later on he has also added the name of his Son Arun as a second nominee. On 13.6.1975 he wrote a letter to his office, it reads as follows:

"To 13 Jun 75  
A.P.M.  
Naval Dockyard,  
Bombay  
Through proper channel  
Sir, CHANGE THE NAME OF MY WIFE  
IN MY SERVICE FILE.

It is requested that the arrangements may be made to change the name of my second wife in my service file as Smt.Sayajabai Vithal Bagul in lieu of Smt.Drowpadi Vithal Bagul as my first was expired and did the second marriage. Sorry for the trouble.

Thanking you, ".

2. On 21.10.1982 he wrote another letter as follows:

Dated: 21-10-1982

"The Admiral Superintendent  
Naval Dockyard, Bombay

Reduction of name of my son Shri Arun as nominee.

Sir,

I, the undersigned most humbly submit the following few lines for your kind consideration.

I have been working in the Naval Dockyard since 21 years when I filled up nomination form, the name of my son Shri Arun was included in the form as a second nominee. My wife Smt.Saijabai Vithal Bagul is the first and real/legal nominee.

Sir, my son Shri Arun is elder one, living separately and not looking after us and he is threatening me that he will claim for my pension, GP Fund etc. To avoid unnecessary legal complication I request that his name as a second nominee may be dropped.

Thanking you, ".

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The office did not take any action till 1983. It appears that in the year 1983 Smt.Drupadabai made an application to the department on 2.3.1983 (vide page 47 of the compilation) complaining that her husband (i.e. the applicant) was thinking of transferring the Provident Fund and other dues in the name of Smt.Sayajabai even though she (i.e. Drupadabai) was alive and was a lawfully married wife of the applicant. She requested the department that approval should not be allowed to effect such transfer. After the office received this letter, certain inquiries were made and ultimately a decision was taken to hold a departmental inquiry against the applicant. Accordingly, the charges together with statement of imputation was prepared for holding such inquiry. The charges against the applicant reads as follows:-

"Shri VG Bagul, T.No.30866, committed gross misconduct in that he made a false representation dated 13-06-75 and contracted a second marriage when his first wife is living and not legally divorced in contravention of Rule 21 of the CCS (Conduct) Rules, 1964".

The relevant statement of imputations state that the applicant made a representation dt. 13th June, 1975 and 21st October, 1982 as mentioned above and that Smt.Drupadabhai filed an application dt. 2nd March, 1983 making an averment that she was a lawfully wedded wife. The imputations further allege that the applicant made a false representation on 13.6.1975 and has contracted second marriage when his wife Smt.Drupadabhai was living, so as to contravene rule.21 of the CCS (Conduct) Rules.

3. After the applicant was served with a charge and statement of imputations, he pleaded that he would like to defend the charges. The enquiry was thereafter held,

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no witness was examined. The above mentioned documents were however relied upon. In addition the affidavit of Smt.Drupadabhai was also taken on record. The Enquiry Officer after completing the enquiry recorded the finding that the charge framed against the applicant was proved. The copy of the proceedings before the Enquiry Officer is at page 53 onwards. The Disciplinary Authority on 17th October, 1985 passed an order holding the charge proved and imposing the penalty of compulsory retirement w.e.f. 17th December, 1985.

4. The applicant preferred an appeal. That appeal was dismissed on 29th December, 1985. The copy of the appellate order is at page 65 onwards.

5. When the matter was heard before the Bench comprising of Shri J.C.Rajadhyaksha and Shri M.B.Mujumdar, the two Members differed. Shri Rajadhyaksha came to the conclusion that there is good evidence on which the charges have been held proved; while Shri Mujumdar found that this was a case of absence of evidence and consequently penalty is not called for as the misconduct is not proved. The Bench therefore, has referred the following two points to the Chairman and which I will be deciding by this Judgment.

- (1) Whether the finding of the Enquiry Officer that the charge framed against the applicant has been proved is based on legal evidence laid before him?
- (2) Whether the impugned order dtd. 17-12-1985 imposing the penalty of compulsory retirement from service upon the applicant is for any reasons liable to be quashed and set aside?

6. I have heard Mr.Waghmore for the applicant and Mr.J.D.Desai for the Respondents. It appears that the Police Patil and the Sarpanch of the Village Daiwad has

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issued a certificate that Smt. Drupadabhai was married to the applicant about 45 years back and that there should not be any objection to give an employment to her son. Smt. Drupadabhai has filed an affidavit dt. 6th August, 1984 before the Enquiry Officer stating therein that she is the legally wedded wife of the applicant and that a son by name Arun was born from this marriage. She has alleged that the applicant is neglecting to maintain her. During the enquiry reliance was placed on these documents. Mr. Waghmore submitted that these documents ought not to have been read as evidence, inasmuch as neither the Police Patil nor Drupadabhai was examined as a witness. Mr. Desai submitted that the departmental enquiry should not be placed on the level with a criminal prosecution and that the strict rules of evidence and the admissibility thereof need not be adhered to. I do not propose to consider this contention of Mr. Desai in details, as I find that it was necessary that the evidence of the Police Patil and Smt. Drupadabhai was led before the above mentioned documents were taken on record. The net result therefore is that the said evidence will have to be ignored and it would be necessary to find out as to whether the other circumstances available before the enquiry officer were sufficient to hold the charge as proved. As stated above Mr. Rajadhyaksha, came to the conclusion that the circumstances do exist for proving the charge while Mr. Mujumdar found that this is a case of no evidence, meaning thereby that there were no circumstances on which the charge can be held proved.

7. The Provident Fund (Central Services) Rules has made provision for the Provident Fund and other incidental

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subjects including payment to the nominees if the subscriber died before receiving it. Under Rule 5 a nomination conferring one or more persons government servant has to make the right to receive the Provident Fund amount in the event of the death of the subscriber before the amount becomes payable or is actually paid to the subscriber. Second proviso to that rule says that a subscriber who has a family, has to make such nomination only in favour of a member or members of the family. The term 'family' is defined in Rule.2. In the case of a male subscriber, wife and children of the subscriber would fall within this definition. It is not in dispute that when the applicant entered service he gave the name of Drupadabhai as a family member. This is clear from the statement of the applicant recorded before the Enquiry Officer on 15th June, 1984. Of course, the applicant has stated therein that he gave the name of applicant though she was not his wife. He further stated that he did so as Drupadabhai was staying with us. I have already reproduced the contents of the letter dt. 13th June, 1975. The subject mentioned at the top of the letter is:

"changing the name of my wife in my Service File".

In the body of the letter the applicant has stated that the name of his second wife Sayajabai be changed in lieu of his first wife Smt.Drupadabhai who has expired. In the letter dt. 21.10.1982 the applicant has further prayed that his Son Arun is living separately and that his name as a nominee should also be dropped. It is thus clear that the applicant has given an admission when making the initial entry in the service record that Drupadabhai was his wife. The letter dt. 13th June, 1975 also constitutes an admission that Drupadabhai was his wife. Added thereto, the applicant has stated that Drupadabhai was dead and that he had married

Sayajabai and hence the name of Sayajabai be substituted in place of the first wife Drupadabhai. It was contended by Mr.Desai that these admissions were before the enquiry officer and the disciplinary authority and that in view of these admissions, the finding about the misconduct is legal and proper.

8. The evidentiary value of an admission has been considered by the Supreme Court in the case of Thiru John v. Returning Officer reported in A.I.R. 1977 S.C.1724. The relevant head note reads as follows:

"It is well settled that a party's admission as defined in Secs. 17 to 20, fulfilling the requirements of S.21, Evidence Act is substantive evidence proprio vigore. An admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption is rebutted the fact admitted must be taken to be established."

Mr. Desai submitted that there is nothing to rebut or disprove the impact of the admissions. As against this Mr.Waghmore submitted that the applicant in his statement during the enquiry has given an explanation as to how the name of Drupadhabhai was entered in the Service Record and that in the face of that explanation the above admission should not be accepted. The explanation can be seen from Question No.4 and answer in the statement of the applicant recorded on 15th June, 1984 (vide page 59 of the compilation). This Question No.4 and the answer reads as follows:

"Q.4. In your application dated 13.6.75 you have stated that Smt.Drupadabhai expired. Is it a fact?

A. This is not a fact. The first wife Smt.Rajabai, whom I had married in 1945 expired in 1954. After that I had second marriage contracted with Smt.Sayajabai in 1969. My intention in writing this letter on 13.6.1975 was that Smt.Sayajabai Vithal Bagul is legal wife whom I had married second time. From the documents it is

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evident that I am illiterate and hence was not aware as to what was actually stated as to the name of my wife. What has been mentioned in the letter regarding Drupadabai is not correct. The person who wrote for me the said application misunderstood and erroneously put the name of Smt.Drupadabhai as my wife instead of "Smt.Rajabai".

Thus the applicant wants to say that he wanted to convey by the letter dt. 13.6.1975 that his first wife Rajabhai died in 1954 and that he married a second wife Sayajabhai in 1969. According to the applicant by the letter dt. 13.6.1975, he wanted to inform the department that Sayajabhai is his legal wife. He further states that what ever has been stated regarding Drupadabhai in that letter is not correct and that the person who wrote that letter misunderstood the position and erroneously put the name of Drupadabhai instead of Sayajabhai.

9. It was for the disciplinary authority and the appellate authority to decide as to whether this explanation should be accepted. The appellate authority has in its order observed that the explanation about misunderstanding and error is untenable, inasmuch as, application was written as per the instructions of the applicant and that the writer of the application could not have himself known the names of Sayajabhai and Drupadabhai.

10. Ordinarily, it would not be possible for the applicant to claim before us re-assessment or fresh appreciation of evidence that was led during the enquiry. All that can be done in an application before the Tribunal is to see as to whether there was no evidence to base the finding or whether the finding is perverse. There is evidence in the enquiry that Drupadabhai is the wife of the applicant. That evidence is in the shape of the admissions as already mentioned. It will not be possible


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to say that this is a case of no evidence. Mr.Waghmore submitted that the finding should be treated as a perverse finding in view of the explanation given by the applicant about the said admissions. I do not think that Mr.Waghmore would be able to urge successfully about the alleged perversity of the findings. It is true that the applicant has tried to give certain explanations. However, the acceptability of that explanation has to be seen along with the sorrounding circumstances. The applicant gave the name of Drupadabhai as his wife while making entries in the Service Record including nomination for P.F., Not only that, in the application dt. 13.6.1975 he reiterated that position and wanted that the name of Sayajabhai should be substituted as his wife in place of Drupadabhai. The heading or subject of the application mentioned at the top also gives an indication as to what the applicant wanted to convey. He has further stated that Drupadabhai was dead. Mr.Waghmore did not contend that statement about Drupadabhai having died is a true statement. However, he contended that the statement about the death of Drupadabhai was absolutely irrelevant. In my opinion, the statement about the death of Drupadabhai cannot be ignored in this fashion. The explanation given by the applicant about the contents of this application is nothing but imaginary one. It is not believable even for a moment. The applicant gave the explanation that he wanted to convey that his first wife Rajabhai has died and the name of second wife Sayajabhai should be substituted. It is material to note that in his statement during the enquiry the applicant has stated that his wife Rajabhai died in 1954. Thus in 1961 (when the applicant entered the service) there was no question of the applicant mentioning the name of Rajabhai as his wife. This is more so when the name was to be mentioned for the

nomination of the P.F. In that background it was not necessary for the applicant to say anything about the death of Rajabhai. The heading of the application speaks much. It shows that the name of his wife has been entered in the service record and he wants to change that name. I have already observed that in the service record the name of Drupadabhai was entered. The body of the application also shows that the applicant wanted to delete the name of his wife Drupadabhai as she is expired. Thus the explanation given by the applicant is far fetched and it will be very difficult for Mr. Waghmore to contend that the finding in the departmental enquiry should be treated as perverse after accepting such far fetched explanation. In fact the explanation of this type does not deserve any credence and if it is left out, there remains the cogent evidence in the shape of admission that the applicant has married Drupadabhai. The applicant has admitted that he has married second wife Sayajabhai. Of course, he states that Drupadabhai has died, but that is obviously a false statement. Under these circumstances, I do not think that this is a case of no evidence. In fact it is based upon legal evidence in the shape of admissions. Consequently imposition of penalty is quite legal and proper. In view of the above findings the application fails and is dismissed. There would however, be no order as to costs.

  
(B.C. GADGIL)  
VICE -CHAIRMAN.