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**CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.**

O.A. NO. 1496 of 1994.

Date of Order - 27 October, 1997.

Between :

**S. Raja Ashok Kumar, aged 43 years,
Son of Late Prakash Rao,
Ex- Telecom Office Assistant(TOA)
(Removed from service)
residing At No.17-2-180/A/1
Madannapet Colony,
Hyderabad- 500659.**

... **Applicant**

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- 1. Union of India, rep. by the
Secretary, Ministry of
Communications,
Department of Telecommunications,
Sanchar Bhavan, New Delhi-110001.**
- 2. The Deputy General Manager(Planning)
O/o the General Manager
Hyderabad- 500 033.**
- 3. The Assistant General Manager(Engineering)
O/o the General Manager,
Hyderabad-500033.**
- 4. The Assistant General Manager(Administration)
Office of the General Manager
Suryalok Complex,
Hyderabad- 500 033.**

... **Respondents**

Counsel for the respondents- Mr. Kota Bhaskara Rao, Addl. CGSC

CORAM :

**HONOURABLE MR. R. RANGARAJAN, MEMBER(ADMINISTRATIVE)
HONOURABLE MR. B.S.JAI PARAMESHWAR, MEMBER(JUDICIAL)**

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O R D E R

(Per Hon. Mr. R. Rangarajan, Member(Administrative))

1. Heard Mr. N. Rama Mohan Rao for the applicant and Mr. Kota Bhaskara Rao for the respondents.
2. In this O.A. the applicant belongs to Scheduled Caste (Mala) and he acquired B.A. Degree certificate from Osmania University in 1973 and he was selected and appointed as Telecom Office Assistant (TOA) with effect from 3.2.1974 after completion of the prescribed training.
3. The applicant married one Kumari Sakkubai who was working as Auditor in the office of the Accountant General, Hyderabad, belonging to his community in 1977. It is stated that he came to know much later that Kumari Sakkubai was older than him. Since his relationship with Smt. Sakkubai was not congenial and she was exhibiting hostile and cruel attitude towards him, he filed a suit for divorce on 11.11.1978. They got a male child on 8.11.1978. Thereafter, she left him with the child and did not return to him. She also filed a false criminal complaint under Section 494 of I.P.C. bearing No. CC No.77 of 1983 on the file of the 11th Metropolitan Magistrate, Hyderabad on 7.6.1983. Ratnabala, to harass him. It is stated that she withdrew the complaint and got the same dismissed as withdrawn by order dated 10.10.1984. The complaint was false and baseless. As she did not mend her nature, the applicant sent her a notice on 28.3.1985 indicating his willingness for mutual divorce in the circumstances. Thereupon she returned back with the child to live with

him after he executed a gift deed conveying half of his house at Madannapet in favour of their child at her instance.

4. Thereafter on 30.6.1985 Smt. Sakkubai reported to have sent a complaint against the applicant to the Telecom Department with the same allegation to take disciplinary action against him under Rule 21(2) of the CCS(Conduct) Rules, 1964 for misconduct and left him once again with the child. The applicant submits that finding no other alternative, he filed O.P.No.474 of 1985 for divorce under ^{the} Hindu Marriage Act, 1955 in which Smt. Sakkubai filed a counter dated 6.11.1985 opposing the divorce petition. That divorce petition still remains to be disposed of.

5. When the position stood thus, on the basis of the complaint submitted by Smt. Sakkubai to the respondents on 30.6.1985 ^{had} that her husband married one Ch. Ratnabala, the

She had also enclosed material papers to substantiate her claim. Thereupon the respondents initiated disciplinary proceedings under ^{the} CCS(Conduct) Rules, 1964 and issued a charge sheet dated 0.4.1986 under Rule 17 of the CCS(Conduct) Rules, 1965. An Inquiry Officer was appointed to inquire into the facts of the complaint. Inquiry was conducted and a report was submitted. On receipt of the inquiry report, from service and served a copy of the punishment order along with a copy of the report of the Inquiry Officer.

Having aggrieved by this act of the respondents, the applicant filed O.A.No.253 of 1989 before this Bench of the Tribunal. This Tribunal set aside the original punishment order issued by the respondents by order dated 27.7.1992 but at the same time allowed the respondents to continue the disciplinary proceedings

after serving a copy of the inquiry report dated 20.11.1986 on the applicant, ~~xxxxxxxxxx~~ On the basis of the above direction, the whole case was decided resulting in the removal of the applicant from service finally.

6. The charges framed against the applicant for misconduct by initiating disciplinary proceedings under Rule 21(2) of the CCS(Conduct) Rules and issued by the Assistant General Manager(Administration) under Rule 14 of the CCS(CCA) Rules, 1965 on 8.10.1985 read as follows :

Annexure-I.

Shri S. Raja Ashok Kumar, TOA (Staff No.6246) married Smt. Sakkubai on 30.1.1977 according to Hindu rites and customs and without obtaining a legal divorce from her married another lady by name Smt. C.H.Ratnabala on 30.8.1980 at Yadadri, 1964, that no government servant having a spouse living, shall enter into or contract a marriage with any person. Shri S.Raja Ashok Kumar is charged with grave misconduct & behaviour unbecoming of a government servant contravening

Annexure-II.

In a written complaint dated 30.6.1985, Smt. Sakkubai wife of Shri S.Raja Ashok Kumar stated that she was married to the latter on 30.1.1977 according to Hindu rites & customs. After the marriage Shri S.Raja Ashok Kumar ~~treating~~ bore a son on 8.11.1978 through Shri S.Raja Ashok Kumar.

Smt. Sakku Bai alleges that she was driven out by her husband Shri S. Raja Ashok Kumar from his house. He married Smt. C.H.Ratnabala at Yadagirigutta Devasthanam on 30.8.1980. A ~~is~~ issued by the Devasthanam was enclosed along with the complaint.

Shri S. Raja Ashok Kumar has stated in the form I, furnishing details of family members that Smt. Sakkubai is his wife. He nominated Smt. Sakkubai for DCR gratuity and for receiving the ~~dated 28.2.84~~ copy of the agreement dated 3.4.1984 duly registered was enclosed with the complaint dated 30.6.1985. It is mentioned in this registered document that Smt. Sakkubai filed a criminal case bearing No.77/83 in the Court of XII Metropolitan Magistrate at Hyderabad for the offence of bigamy under Section 494 of I.P.C.

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Even after this agreement was signed by both Shri Ashok Kumar and Smt. Sakku Bai, the former did not abide by the terms & conditions of the agreement but continued to ill-treat her and she was, therefore, constrained to make a complaint for taking departmental action against Shri S.Raja Ashok Kumar.

Shri S. Raja Ashok Kumar has violated rule 21(2) of CCS(Conduct) Rules, 1964, inasmuch as he married Smt. C.H.Rathnabala on 30.8.80 at Yadgiri Gutta without obtaining a legal divorce from Smt. Sakku Bai and thereby behaved in a manner unbecoming a government servant contravening rule 3(i)(iii) of CCS (Conduct) Rules, 1964. "

7. The inquiry was conducted and a copy of the inquiry report was also given to him in view of the ~~.....~~ By order dated 27.7.1992 (Annexure-25 at page 92 of the OA) the disciplinary authority on consideration of the circumstances, decided to continue the disciplinary proceedings against the applicant from the stage of supply of a copy of the inquiry report and it was also ordered that the applicant shall be deemed to have been placed under suspension with effect from 11.12.86 in accordance with Rule 10(4) of the CCS(CCA) Rules, 1965. The inquiry proceedings held on 2.5.1986 were also handed over to him (Annexure-13 at pages 46-47 of the OA). The inquiry report of the Inquiry Officer-&-AGM(Admn) dated 20.11.1986 is annexed to the OA. as Annexure-16 that at pages 51-52). The Inquiry Officer held/the applicant was CCS(Conduct)Rules, 1964 which says that no Government servant having a spouse living, shall enter into, or contract a marriage with any person. The applicant having married Smt. C.H.Rathnabala on 30.8.1980 at Yadagirigutta while he was having already a legally wedded wife, namely, Smt. Sakku Bai being earlier married her on 30.1.1977, has violated Rule 3(i)(iii) of CCS(Conduct) Rules, 1964 and also

Rule 21(2) of the said Conduct Rules.

8. The applicant submitted a representation against the inquiry report dated 8.8.1992 and on the basis of it, the respondents came to the conclusion that the applicant failed to canvass any points in his defence of his case in his representation and it was presumed that he had no representation against the inquiry report. Hence respondent No.3 passed the final order removing the applicant from service vide his order dated 31.12.1992 at page 95 of the O.A.

an appeal to respondent No.2 by his representation dated 24.11.1992 which is at Annexure-28 (page 106) of the O.A. The appellate authority after perusal of the appeal, rejected the same by order No. SD-1587/III dated 9.12.1993 (Annexure-29 at pages 117-125 of the OA) upholding the decision of the disciplinary authority.

9. This O.A. is filed for setting aside the impugned order No. X-RAK/92-93/21 dated 31.12.1992 (Annexure-A-27) issued by respondent No.3 removing the applicant from service with effect from 31.10.1992 and the appellate order No. SD-1587/III dt. 9.12.1993 (Annexure-29) issued by respondent No.2 rejecting his appeal and for issuance of a direction to the respondents to reinstate him in service with all consequential service and monetary benefits.

10. The main contention of the applicant in this O.A. is that Mrs. Banwari was a person of intransigent attitude and temperamental incompatibility. As she was not

responding to the appeals of the applicant, only with a view to bring her to senses and reason, the applicant enacted a drama by pretending to enter into marriage with Smt. Ch. Ratnabala so that his wife may atleast then realise the gravity of the situation and come back to him. Smt. Ch. Ratnabala is a christian by birth and religion. The alleged marriage of the applicant with Ch. Ratnabala is a farcical marriage never intended to be effective and operative nor did she ever live with the applicant as his wife. It was a drama played by the applicant to bring his wife to her senses. It was not at all a marriage in the eye of law as Smt. Ratnabala was a christian by birth and the applicant was a Hindu by caste. Hence such a marriage between a Hindu and a christian is a void marriage and a nullity according to Section 5(1) of the Hindu Marriage Act, 1955, ^{were} no ceremonies/observed like Saptapadi etc. As per Section 7 (1) of the Hindu Marriage Act, a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto and as per Section 7(2) where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken. The ceremonies for a Hindu marriage should fulfil the conditions prescribed for the same in Section 7 of the rites and ceremonies which include Saptapadi, it is submitted that the certificate given by the temple authorities is not a valid one. Further it is submitted that though the ~~statement~~ ^{on Oath} on 30.8.1980, such a statement ~~cannot~~ be taken as an oath evidence as it is against the fundamental principle that

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no person shall be compelled to be a witness against himself. For this the applicant relies on the judgments of the apex Court reported in AIR 1971 SC 1153 (Smt. Priya Bala Ghosh vs. Suresh Chandra Ghosh) and in (1996) 6 SCC 122 (P. Satyanarayana and another vs. P. Mallaiah and others). It is also contended by the applicant that the witnesses, namely, Smt. Sakkubai and Sri J. Kumaraswamy, JE (Vig.) who were listed as witnesses in the chargesheet were not examined in his presence and thus he was not given an opportunity to cross-examine them. He further stated that the temple authority certificate as well as his photograph with Smt. Ratnabala were not verified before coming to a proper conclusion. The applicant has also submitted a certificate signed by a Notary Public declaring that the applicant's marriage with

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on 30.8.1980 was beyond their control due to the circumstances and it was null and void.

counsel for the applicant submits that the disciplinary proceedings have to be treated as irregular and have to be set aside for the reasons stated above.

11. A short reply has been filed by the respondents. The main substance of the reply is that the marriage was conducted in accordance with the Hindu customs as per ~~.....~~ has been verified by witness No. 2 J. Kumaraswamy, JE (Vig.) and proved to be in order. Hence the applicant violated the Conduct rules i.e. Rule 21(2) and hence he has been dealt with in accordance with the disciplinary rules. They further stated that the whole case as made out by the applicant is a concocted one and he has no ground to challenge the removal order issued by the disciplinary respondents have prayed for dismissal of the application.

12. Before examining the contentions raised by both parties, it is essential to peruse carefully Rule 21 (2) of the CCS(Conduct)Rules,1964. Rule 21 of the said Rules is in respect of ' restrictions regarding marriage'. The relevant Rule 21(2) reads as follows :

" 21. Restrictions regarding marriage :-

(1) x x xx xx

(2) No Government servant having a spouse living, shall enter into, or contract a marriage with any person :

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that -

- (a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
- (b) there are other grounds for so doing. "

The above rule clearly indicates that no Government servant having a spouse living, shall enter into, or contract a marriage with any person; provided the Central Government may permit him to enter into or

that the marriage ceremony cannot be performed by a Government servant having a spouse living unless he gets approval from the Central Government before he enters into or contract ^{second} marriage when his spouse is living. It is further clear from the above rule that before marriage in whatever fashion it is to be performed - whether as per Hindu Law or as per Christian Law, the Government servant should get the approval of the Government for entering into such marriage. If the Government servant who is having a spouse living, enters into an agreement with another lady for marrying her, such an agreement should get prior approval of the



Government and the marriage ceremony comes later. For entering into an agreement for a second marriage when a spouse is living, there are no rites and ceremonies stipulated in the Hindu Marriage Act. It is a voluntary disclosure by the Government servant in regard to his second marriage, when he has already a spouse living.

13. In the present case, the applicant who is working as Telecom Office Assistant has to get the approval of the Government before he gives his consent to marry Smt. Ch.Ratnabala when Smt. Sakkubai whom he had married in the year 1977 is living. The performance of the marriage in accordance with the Hindu rites and customs is a latter ceremony or event. The initial step that has to be taken by ~~the respondent~~ ~~is to get the~~ approval of the respondents. The applicant did not take any such approval from the respondent-authorities before contracting the second marriage with Ch.Ratnabala when Smt.Sakkubai, his first wife, was living. Thus even if the ~~marriage was not conducted/ performed in accordance with the Hindu rites and customs, the very conduct, that the applicant had contracted marriage with Smt.Ch.Ratnabala when Smt. Sakkubai, his legally married wife, is living, without approval from the respondent-authorities, is a violation of Rule 21(2) of the CCS(Conduct)Rules, 1964.~~ Hence the ~~marriage was not conducted/ performed in accordance with the Hindu rites and customs, the very conduct, that the applicant has violated the Conduct Rules by contracting a marriage with Ch.Ratnabala without proper approval when his first~~ of the said Rules as the marriage was not conducted in accordance with the provisions contained in Section 7 read with Section 5 of the Hindu Marriage Act. Thus the applicant has violated the Conduct Rules by contracting a marriage with Ch.Ratnabala without proper approval when his first

14. The applicant submits that the marriage was not conducted following the Hindu rites and customs quoted above and he also disputes the issuance of the certificate



by the temple authorities as the marriage was conducted without following the Hindu rites and custom. He further submits that he has not married Ch.Ratnabala and that Sapthapadi which is necessary for constituting a valid marriage under the Hindu Marriage Act was not performed and that therefore such a marriage cannot be construed as a valid marriage and it is an invalid marriage in the eye of law.

15. If such is the case, it is not understood why he has identified his photograph with Smt.Ch. Ratnabala taken in the temple and confirmed the marriage certificate obtained from the temple authorities of Laxminarasimhaswamy Devasthanam, Yadagirigutta. If the marriage is a farcical one, he could have stated then and there itself that the marriage was not conducted at all or it was performed due to some coercion or for some extraneous reasons. He has not cross-examine Smt.Sakkubai and J.Kumaraswamy, JE (Vig.) in the presence of the Inquiry Officer. This is evident from

at pages 46 of the OA). If the applicant is of the opinion that that was not a valid marriage, then his responsibility contention that the marriage is not valid is an after thought and the same will not be sufficient to state that the marriage More than anything else, the applicant himself has filed an affidavit categorically admitting his marital relationship

He has further stated in the inquiry proceedings that he did not need any defence counsel and he was also ~~not willing to be heard once again~~ He had given permission to the authority to decide his case as it deemed fit. When



he was questioned whether his marriage was registered in the Devasthanam office, he affirmed it.

It is also seen from the proceedings that the certificate issued by the temple authorities was ~~not~~ confirmed by the Executive Officer through Sri Kumaraswamy, a witness in the charge sheet. If the applicant disputed the factum and validity of the second marriage, he should have produced the necessary witnesses in his favour and proved his innocence of the charges. The applicant did not take any such steps. He took the charge sheet in a

conclude.

16. If the view of the applicant was that his with a view to discipline his first wife to come back and stay with him, then there was no need at all for the applicant to produce the Notary certificate (Annexure-13/A) testifying that his marriage with Ch. Ratnabala was

applicant wanted to wriggle out of the second marriage, he obtained the Notary certificate, the validity of which cannot be questioned. The submission that he married second time to discipline his first wife is nothing but a ruse to escape penal consequences.

17. Thus from the above appreciation of the facts and circumstances of the case, we are of the opinion that the applicant has first of all violated Rule 21(2) of the Ratnabala without taking proper prior approval from the Government as required under the statutory provisions. Having

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When there was conclusive and overwhelming proof that there

was sufficient reasons to come to the conclusion that he had married Ch. Ratnabala while his first wife was living, the applicant cannot now say that the disciplinary proceedings was decided without any evidence?

17. Hence the submission of the applicant that this is a case of no evidence cannot be taken on its face value when there are enough and convincing and self incriminating materials to prove that he had married Ch. Ratnabala.

18. In terms of Government of India decision communicated in M.H.A.O.M.No.219/51/Est. dated 16.2.1955, the procedure for dealing with requests from Government servants for permission to remarry while first wife is still living is fully explained. If the applicant had applied for such a permission as per Rule 21(2) of the Conduct Rules following the O.M. referred to above, the case of the applicant would have been examined in detail by the respondent- authorities and had taken a proper decision according approval or otherwise to him before he underwent his second marriage with Ch. Ratnabala.

As the applicant had not followed the instructions of Government of India as referred to above, he lost the available chance to correct himself thereby avoiding unpleasant result of removal from service.

19. The applicant relies on the judgment of the ~~Supreme Court in the case of Ch. Ratnabala vs. The Union~~ contention raised by him on the basis of the above judgment is that the marriage was not a valid marriage. Prima facie, he relies on the following observations of the apex Court to state that the conclusion that the second marriage is a valid one cannot be said to be a correct decision: (Para-14)

" Prima facie the expression 'whoever marries' must mean 'whoever.... marries validly' or whoever marries and whose marriage is a valid one'. If the marriage is not a valid one,

according to the law applicable to the parties, no question of its being void by reason of its taking place during the lifetime of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law."

There is no further explanation necessary in this connection as the applicant failed to prove that it is not a valid marriage as the marriage was confirmed by the certificate issued by the temple authorities, Yadagirigutta and also due to the fact that the applicant himself had obtained a Notary certificate annulling the said marriage with Ch. Ratnabala. Hence the above observation of the apex Court is of no help to the applicant.

20. The second submission of the applicant basing on the above case is that admission of marriage by an proving the offence of bigamy or adultery. The applicant himself has admitted that he had married Ch. Ratnabala and he has also produced the Notary certificate in support of alleged dissolution of his marriage with

marriage. An invalid marriage in its inception need not and cannot be annulled by a Notary Certificate.

The applicant is a Hindu belonging to ... community but Ch. Ratnabala it is alleged belonged to Christian community. This is inter-caste marriage. This marriage is governed by either the Indian Marriage Act or the Special Marriage Act. Nowhere under these Acts,

swearing to an affidavit before a Notary.

A notary is appointed under the provisions of Notaries Notaries
Notary appointed under the Negotiable Instruments Act cannot nullify a marriage. The marriage performed either

under the Indian Marriage Act or the Special Marriage Act, has to be annulled only by following the procedure contemplated therein. In the absence of annulling the marriage as per these Acts, the normal presumption is that the said marriage still subsists. His marriage with Smt. Ratnabala was established by the affidavit sworn to by the applicant before the Notary.

If the certificate given by him is not a valid one for non-following of the rites and customs under the Hindu Marriage Act, then he should not have registered his marriage with the temple authorities. We do not think ~~that the temple authorities on their own accord had registered his marriage in the year 1980 with any oblique motive which he was not aware with the change of~~ registered his marriage in the year 1980 with any oblique ~~motive which he was not aware with the change of~~

Further, issuance of the said certificate was confirmed ~~by the temple authorities on their own accord~~ (Vigilance) Sri Kumaraswamy. There was no need for the ~~applicant to approach the temple authorities~~ married Ch. Ratnabala according to customary rites.

In view of these materials, it has to be held that the applicant's denial of his second marriage is not acceptable. Hence the second contention raised by the judgment merits rejection. Accordingly it is rejected.

21. We have seen from the proceedings that the ~~order issued by the disciplinary authority was~~ is an exhaustive and a reasonable order. The disciplinary authority has considered all the points mentioned by the applicant in this O.A. as well as other contentions. Hence the order of the disciplinary authority cannot be said to be a decision with no evidence or a perverse decision.

 cornered fully by the respondent-authorities and that his removal from service became inevitable, he submitted

an exhaustive appeal dated 24.11.1992 to the respondent No.2 taking the contentions which he could have brought out during the inquiry or in his earlier defence statement or in his written brief.

The inquiry proceedings play an important role in coming to the conclusion whether the principles of natural justice were afforded to the delinquent employee or not. If the delinquent employee takes the inquiry proceedings in a casual way and takes no interest to prove his defence fully when sufficient and adequate opportunity was given to him, none else can be blamed except the delinquent employee himself for his attitude.

23. In the present case, we find that sufficient defence at the time of enquiry. But he failed to avail that opportunity to prove his case. In the appeal though he has brought out a number of grounds, all the grounds were duly taken into consideration by the appellate authority respondent No.2 in his order dated 9.12.1993. He has clearly spelt out the various contentions raised by the applicant in his appeal. The contention of the applicant that the issue of the charge sheet and disposal of the same by the rejected by the appellate authority and we feel that the reasonings given by the appellate authority in this connection are quite in order and apt. The submission of been keenly examined by the appellate authority in his order and has been rejected for valid reasons.

24. In view of the above, we do not find any ~~basis~~ to come to the conclusion that the case was decided without any evidence and hence we are not inclined to interfere with the disciplinary proceedings.

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25. In this connection, the observations made by the apex Court in a case reported in (1996) SCC(L&S) 1464 (State Bank of Bikaner & Jaipur vs. Srinath Gupta & another) are relevant. It was observed by the apex Court in that case that " it is now well settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself." We think that the above observations of the apex Court have been fulfilled complied with in the present case. The same India vs. H.C. Goel reported in AIR 1964 SC 364.

26. The applicant belongs to the reserved community. It appears that he has come in to life by dint of hard labour and efforts. It may be possible that he may be having aged dependants to support him. He has also been blessed with a son through Smt. Sakkubai, his first wife. It is not known whether he had any other child through Smt. Ch. Ratnabala. In view of the fact that the applicant may have to support his dependents, his son through Smt. Sakkubai and Ch. Ratnabala, the punishment of removal from service imposed on the applicant appears to us to be excessive. This may uproot his family badly.

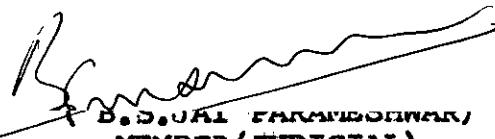
Now that the applicant himself states that his marriage with Ch. Ratnabala is null and void and he is separated from her, but marital proceedings between him and his wife are pending adjudication. Taking totality of removal from service, we humbly feel that his case requires to be looked into rather leniently. If the applicant feels necessity of any leniency with regard to the punishment, he

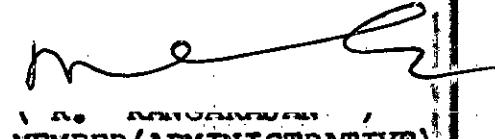
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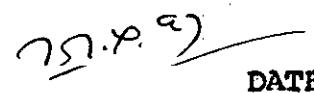
Member, in charge of Personnel in the P & T Board for consideration of his case for reduction in his punishment.

If such a representation is received, the Member in charge of Personnel may consider his request sympathetically.

27. In the result, the O.A. is dismissed, subject to the observations made above. No order as to costs.


B.S. JAIN
MEMBER (JUDICIAL)


MEMBER (ADMINISTRATIVE)


DATED THE 15th OCTOBER, 1997.

DJ/


D.R. (J)