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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 38/96
T.A. No.

199

DATE OF DECISION 04.02.2000

B.S.Kunwar

Petitioner

Self

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. K.N.Shrimai

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(N.P.NAWANI)

Adm. Member

(S.K.AGARWAL)

Judl.Member

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 04.02.2002

OA No.38/96

B.S.Kunwar S/o Shri C.S.Kunwar, aged 43 years r/o 6/273, Malviya Nagar, Jaipur, posted in Special Bureau, Government of India.

.. Applicant

Versus

1. Union of India through the Additional Secretary (Pers.), Cabinet Secretariat, Room No. 7, Bikaner House Annexe, New Delhi.
2. Joint Secretary (Pers.), Cabinet Secretariat, Room No.7, Bikaner House Annexe, New Delhi.
3. Under Secretary (Inquiry Officer), Cabinet Secretariat, Room No.7, Bikaner House Annexe, New Delhi.

.. Respondents

Applicant, B.S.Kunwar, present in person.

Mr. K.N.Shrimal, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

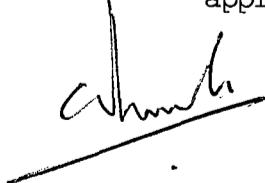
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant seeks following reliefs in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985:

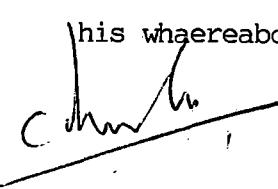
- (i) " To quash and set aside the penalty order No.14/19/88-Pers-11-1362 dated 1.2.1994 of the Respondent No.2 (Joint Secretary (Pers) with all consequential benefits to the applicant.
- (ii) To quash and set aside the appellate order No.14/19/88-11-10007 dated 18.7.94 (Annexure A/9), rejecting the appeal of the applicant, with all consequential benefit to the applicant.



(iii) To quash and set aside the order No. 14/19/88-per-11/324 dated 17.1.95 (Annexure A/11), rejecting the second petition/appeal of the applicant, with all consequential benefits to the applicant.

(iv) To quash the charge memo No. 14/19/88-Per-11-3057 dated 2.4.91 (Annexure A/4), on the ground that it does not disclose any misconduct which can justify disciplinary action against the applicant."

2. The facts of the case as stated by the applicant are that he is presently working as a Field Officer with Special Bureau; that he got married on 11.12.1981 at New Delhi and his wife is working as a Trained Graduate Teacher in a school under the Delhi Administration; that after one month of the marriage the applicant wanted to take her to Imphal where he was posted but she did not go with him; that the applicant managed to take her there in April, 1982 but was sent to Delhi for delivery after 3 months where she delivered a daughter on 18.9.1982; that applicant came to Delhi on leave during last week of December, 1982 and wanted to take his wife and daughter to Imphal but she again refused; that having failed to persuade her, the applicant made a representation for a transfer to Delhi on 13.1.1983 (Ann.A2); that on 18.3.1983 the applicant reached Delhi on transfer and stayed with his wife for the night but she quarrelled with him and said that she will neither live with him, nor give him divorce and get him arrested under Anti Dowry and Anti Cruelty Laws; that after about 20 days applicant's younger brother died in an accident and she was called and persuaded to live together but she refused, even after two more attempts made by him; that after a silence of more than seven years during which she made no contact with him at all, she submitted a complaint dated 22.6.1990 to the Secretary concerned (Ann.A3) stating that the applicant had married another woman and had a son also adding that she did not know his whereabouts; that he was served with a charge memo on the basis of the



said complaint dated 2.4.1991 (Ann.A4) under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 (for short 1965 Rules) and the only charge was that the applicant had neglected his wife by living with another woman and this act of his is unbecoming of Government servant under Rule 3(1)(iii) of the C.C.S. (Conduct) Rules; that after completion of proceedings on 27.9.1993 the decision imposing a major penalty of reduction of the pay of the applicant by four stages from Rs. 2375/- to Rs. 2120/- for a period of 4 years with cumulative effect was communicated to the applicant vide the impugned order dated 1.2.1994 (Ann.A1); that vide order dated 10.2.1994 (Ann.A7) the applicant was allowed to cross the Efficiency Bar (for short EB) w.e.f. 28.9.1993 and that the applicant submitted an appeal dated 18.3.1994 and then a petition dated 23.3.1994 against the penalty imposed but both were rejected forcing the applicant to file this Original Application.

3. Notices of this OA were given to the respondents, who have filed a reply to which the applicant has filed a rejoinder and the respondents have also filed an additional counter to the rejoinder.

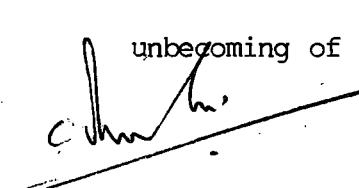
4. The respondents in their reply have stated that a complaint was received in the office from Smt. Suman Kunwar, wife of the applicant to the effect that he had neglected her and his child and also married another woman from which he had got a son. When called upon to explain, the applicant stated that he had started staying with another woman named Km. Mani Naurem after 6-7 months of his separation from his wife but added that he had not married her and the lady was only a living companion. It was further stated by the respondents that since living away from wife and living with another woman, fathering children out of such an unholy alliance was unbecoming of any such person, much less a government servant who is required to maintain a high standard of good personal behaviour and since such acts jeopardise the reputation of the Department, a Departmental

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Enquiry (for short DE) was ordered against the applicant under 1965 Rules. The DE proceedings went into all the aspects of the case and charges against the applicant were established. The Disciplinary Authority, considering all the aspects, imposed the penalty of reduction in his pay by four stages in the pay scale of the applicant i.e. Rs. 2000-3200 for a period of 4 years with cumulative effect, which was maintained by the Appellate Authority after considering the plea of the applicant.

5. We have heard the applicant who appeared in person and argued his case and the learned counsel for the respondents and have also carefully examined the material on record.

6. The applicant has essentially based his case on the plea that there was no charge of bigamy against him which was a prescribed misconduct under Rule 21 of the Central Civil Services (Conduct) Rules, 1964 (for short, 1964 Rules) while the charge of neglecting his wife and living with another woman was not prescribed as misconduct under the 1964 Rules. This being the case, the respondents had no power, authority or jurisdiction to punish him on such a charge and such an act will be violative of Article 20(1) of the Constitution of India. It has further been contended by him that there is no charge of misconduct against the applicant in the performance of his duty and the charge has no nexus with performance of his duties. Further, living with another woman is not a misconduct, even keeping a mistress is not a misconduct. The expression "misconduct of Government Servant" makes it quite clear that the expression is with relation to the entity of a person as a Government servant which is separate from his entity as an ordinary member of the society and unless there is something against an employee as determined by the duties and duty ethics like integrity, devotion to duty and faithful discharge of duty, any act which may be considered improper in a society does not become unbecoming of a Government servant within the meaning of Rule 3(1)(iii) of



1964 Rules. The applicant has also stated that the very fact that the respondents have released his EB within a few days of imposition of penalty and the Government allows maternity leave even to unmarried woman employees also strengthen his averments. The applicant has cited following cases in support of his contentions:

1985 (1) SLR 573, Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation and anr.

AIR 1984 SCC (3) 1361 A.L.Kalra v.P.& E. Corpn. of India Ltd.

1985 (1) SLR 598 Rabindra Nath Ghosh

1988 (2) SLR 65 B.Tarmamad V. District Superintendent of Police, Jamnagar and anr.

7. The learned counsel for the respondents, however, argued that it was a serious misconduct on the part of a responsible Government Officer, working in a sensitive organisation like Special Bureau to neglect his wife and daughter and admittedly live with another woman and father the children from such an unholy alliance and he was accordingly proceeded with as per rules and justly awarded a punishment of reduction of his pay by four stages with cumulative effect. It has also been stated that release of EB was an action independent of disciplinary proceedings and does not prove anything. It has strongly been contended on behalf of respondents that the phrase "unbecoming of Government Servant" cannot be assigned any narrow and restrictive meaning as sought to be done by the applicant and its meaning will depend on the facts and circumstances of each case and in this case the applicant's action squarely fell within the meaning and the acts and omissions enumerated in 1964 Rules are illustrative and not exhaustive. It was also argued by the learned counsel for the respondents that the case law cited by the applicant were all distinguishable on accounts of their own facts and circumstances that any ruling which holds that living with another woman has been overlaid by the judgment of Hon'ble the Supreme Court of India.


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8. We have given our careful considertion to the contentions of the rival parties. It is well settled law that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment has to be exercised in a narrow field. In the case of Union of India vs. Parma Nand, reported in AIR 1989 SC 1185, it has been observed by the Hon'ble the Supreme Court that "we must unequivocally state that the jurisdiction of Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse". In another recent judgment in Apparel Export Promotion Council v. A.K.Chopra reported in 1999 (2) ATJ 277, the Apex Court has held that the justification for interference by Tribunal is justified only where (i) there is no evidence and findings are perverse and (ii) when these are legally untenable. In the present case, the applicant has taken no plea about its being a case of no evidence or proceedings having been vitiated on account of procedural lapses and, therefore, we are not required to go into these aspects of the DE. What the applicant has besically contended is that "neglect of wife and living with another woman and fathering children from her" is not one of the prescribed misconducts in the 1964 Rules and he could not have, therefore, been charged with "conduct unbecoming of a Government Servant" within the meaning of Rule 3(l)(iii) of 1964 Rules in the first place. The respondents have strongly opposed such an interpretation and have asserted that the said expression cannot be assigned a narrow and restrictive meaning and the list of misconducts in the 1964 Rules is only illustrative and not exhaustive.

9. Whether the "misconduct" for which a Government servant is charged has to be mandatorily enumerated as one of the prescribed misconducts in the relevant Conduct Rules before a Government servant can be proceeded against in a DE being the very core of the controversy in

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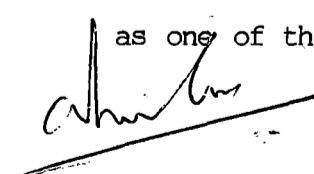
this, we can first proceed to examine how far such a contention of the applicant can be legally acceptable. Central Civil Services (Conduct) Rules, 1964 provide in Rule 3 under heading General that (1) every government servant shall at all time -

- i) maintain absolute integrity
- ii) maintain devotion to duty and
- iii) do nothing which is unbecoming of a Government servant.

The said 1964 Rules thereafter specify some of the acts and omissions in Rule 3-A to 22. Obviously, the acts and omissions mentioned in Rules 3-A to 22 cannot be exhaustive. This aspect of the matter has been considered in detail by Hon'ble the Supreme Court in the case of Union of India and ors. v. J. Ahmed, AIR 1979 SC 1022. In this case the Apex Court was dealing with the All India Services (Discipline and Appeal) Rules, 1954 which are, more or less analogous to the 1964 Rules and proceedings against the respondent, who, being a Deputy Commissioner in Assam and was charged with, *inter alia*, alleged failure to take effective preventive measures against civil disturbances. The Apex Court has observed that "A survey of these rules would show that disciplinary proceedings can be held against a member of the service for any act or omission which renders him liable to a penalty and such penalty can be imposed for good and sufficient reasons. The All India Services (Conduct) Rules, 1954 prescribe a code of conduct for member of service. Rule 3 is of general nature (as in 1964 Rules) which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up with highest expectation of an officer holding a responsible post or lack of aptitude or qualities of leadership would not constitute as failure to maintain devotion to duty... If Rule 3 was the only rule in Conduct Rules it would have been rather difficult to ascertain what constitutes a misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules (Rules 3A to 22 in

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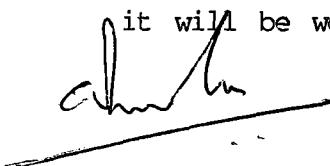
1964 Rules) prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other acts or omissions may as well constitute misconduct." It may be worthwhile to give a few examples. In State of Tamilnadu v. P.M.Belliappa, 1994 (3) SLR 530, the Madras High Court held that the action of Belliappa, an IAS officer in enticing a married woman whose husband was another officer though relating to an activity outside his scope of employment rendered him guilty of misconduct as it involved moral turpitude and his conduct was unbecoming of his service. In Thakore Chandra Singh Takt Singh v. State of Gujrat, 1985 (3) SLR 566, the High Court decided that the conduct of a Police Officer against whom a charge of kidnapping was proved was guilty of misconduct, unbecoming of a Government servant. In Om Prakash Bindan v. Union of India, 1994 (2) SLR 391, the Court upheld the penalty imposed on a Government servant who negligently identified wrong person and enabled him payment of money not due to him. In view of the aforementioned judgment of a three Judge Bench of Hon'ble the Supreme Court in the case of J.Ahmed (supra) and the other cases cited above, we have no hesitation in holding that the list of misconducts in the 1964 Rules is only illustrative and not exhaustive and there can certainly be some acts or omissions which will constitute conduct "unbecoming of a Government servant" in Rule 3(1)(iii) of 1964 Rules though not specifically listed. The contention of the applicant that since living with another woman and neglecting his wife and daughter is not enumerated as one of the misconducts in 1964 Rules, the Disciplinary Authority had no



jurisdiction to charge the applicant with said misconduct and punish him, stands, therefore, rejected.

10. In view of the legal position as brought out above, the cases cited by the applicant are of no help to him in establishing his contentions. Further, in the matters of misconduct, each case has its own peculiar facts and circumstances and as already discussed earlier, the misconduct, even though not specifically enumerated in the conduct rules, has to be weighed against the facts and circumstances of a particular case. The applicant has also argued that he has an entity as a Government servant and yet another entity as an ordinary member of the society and any charge of misconduct against him has to have a nexus with his entity as a Government servant only. We have given our anxious consideration to this contention but cannot accept it. It cannot be ignored that the applicant is serving in one of the important intelligence agency and his living with another woman can have security implications. We are not saying even for a moment that there may be any such danger in respect of the applicant in this case but if living with any other woman is "allowed" to be a practice in a sensitive agency like the one the applicant is working for, it may have very serious implications, which may not be visible straightway but may come to light only when the damage has already been done. Such an act in the case of employees of such an agency may have dangerous repurussions not only for the agency but for the country as a whole. In our opinion, therefore, there does exists a possibility of a nexus between the employee like the applicant living with another woman and his loyalty and commitment towards the organisation he is working for.

11. Coming to the case of Ministry of Finance and another Vs. S.B.Ramesh reported in AIR 1998 SC 853 decided by the Apex Court as recently as 2.2.1998 and cited by the learned counsel for the respondents, it will be worthwhile to extract the following portions of the judgment,

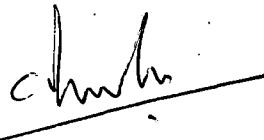


which encompass of the observations of a Bench of this Tribunal and the disapproval of these of by Hon'ble the Supreme Court of India:

"Though it would be ideal if sexual relationship is confined to legal wedlock, there is no law in our country which makes sexual relationship of two adult individuals of different sex, unlawful unless the relationship is adulterous or promiscuous. If a man and a woman are residing under the same roof and if there is no law prohibiting such a residence, what transpires between them is not a concern of their employer. Such a life, if accepted by the society at large, without any displeasure or grudge, then it cannot be said that there is any moral turpitude involved in their living. In this case, there is no case that on account of the applicant living with Smt. K.R.Aruna, his reputation among the general public has been lowered or that, the public has been looking down on his conduct as immoral one. Therefore, even if factually, the allegation that the applicant who is already married to another woman is living with Smt. K.R.Karuna is proved to be true, we are of the considered view that, that alone will not justify a finding that the applicant is guilty of misconduct deserving departmental action and punishment.

8. Immediately we prefer to record our total disapproval with the above observations of the Tribunal. We propose to deal with and rest our decision on the merits with reference to the findings of the Tribunal rendered on the basis of the facts relating to the case."

It was also argued by the applicant that the above observation of the Apex Court cannot be considered as a decision of the Apex Court

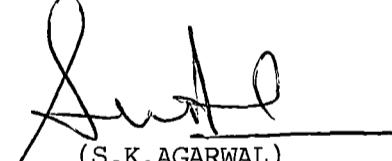


recorded after due consideration of the issue. The applicant has cited the case of Balraj Taneja and anr. v. Sunil Madan and anr., VIII (1999) SLJ 65 in support of his arguments. We are of the opinion that the case is distinguishable and we cannot persuade ourselves to agree to such a contention of the applicant. The Apex Court has, in very clear terms, disapproved of an interpretation of "misconduct", which interpretation sought to indicate that even if it is proved that a Government servant, who is already married, is living with another woman, it will not alone justify a finding that such Government servant is guilty of misconduct deserving departmental action and punishment. It is well settled law that any specific observation or for that matter even an obiter dictum of the highest Court of the land, has to be followed by all Courts/Tribunals and we have no intention of not doing so. We are of the opinion that the Apex Court has, in the said paragraph, laid down the law that living with another woman and neglecting his wife and children by a Government servant is a misconduct, one unbecoming of a Government servant.

12. In view of above discussions, we are of the considered view that the Original Application has no merit and there is no justification for us to interfere with the order dated 1.2.1994 (Ann.A1), order dated 18.7.1994 (Ann.A9), order dated 17.1.1995 (Ann.A11) and the Memorandum of charge dated 2.4.1991 (Ann.A4). The Original Application is accordingly dismissed with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member