

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 122/2000  
~~Ex. No.~~

199

DATE OF DECISION 19.4.2002

Chanda Ram Bunker Petitioner

Mr. Ajay Ras Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent


Mr. Sanjay Pareek Advocate for the Respondent (s)

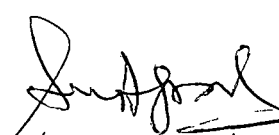
**CORAM :**

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

The Hon'ble Mr. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

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

  
(H.O.GUPTA)  
Member (Administrative)

  
(S.K.AGARWAL)  
Member (Judicial)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A.No.122/2000

Date of order: 15/4/2002

Chanda Ram Bunkar, S/o Sh.Prabhu Dayal, R/o Jadon  
Nagar-B, Durgapura, Jaipur, working as Addl.  
Commissioner, Customs & Central Excise, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary, Mini.of Finance,  
Deptt. of Revenue, North Block, New Delhi.
2. Union Public Service Commission, Dholpur House, New  
Delhi, through its Secretary.
3. Chief Commissioner, Customs & Central Excise, NCRB,  
Statue Circle, Jaipur.

...Respondents.

Mr.Ajay Rastogi : Counsel for applicant

Mr.Sanjay Pareek : Counsel for respondents.

CORAM:

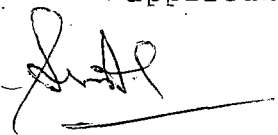
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.H.O.Gupta, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985  
the applicant makes a prayer to quash and set aside the  
impugned order dated 16.2.2000 by which the applicant has  
been retired compulsorily from service and to direct the  
respondents to reinstate the applicant in service forthwith  
on the post of Addl.Commissioner of Customs & Central Excise  
with all consequential benefits.

2. In brief facts of the case as stated by the  
applicant are that while he working on the post of  
Additional Commissioner, Customs & Central Excise, the  
applicant was served with a memorandum of charge sheet on

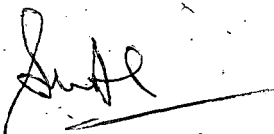


4.11.87. The allegations against the applicant are that he contracted second marriage while having a spouse, without permission of the Central Govt, thereby violated the provisions of Rule 3(1)(iii) and Rule 21(2) of the CCS (Conduct) Rules, 1964. It is stated that after issuance of the charge-sheet, enquiry officer was appointed. The applicant filed a detailed reply alongwith certificate dated 5.1.75 issued by the Sarpach, Gram Panchayat, Norangpura, Distt. Jaipur, by which it was made clear that the first marriage of the applicant was solemnized in the year 1959 when the applicant was only 14 years of age and this marriage was dissolved in the year 1973, as per customs and usages prevalent in the community and thereafter, the applicant was married to Smt. Badami in February 1974, much before the applicant joined in Govt service. The Enquiry Officer, after enquiry, exonerated the applicant, vide its report dated 17.9.92 but the disciplinary authority did not agree with the report of the Enquiry Officer and after considering the submissions of the applicant, ordered denovo enquiry vide its order dated 8.8.94. This order was challenged by the applicant in O.A No.1596/94 before Allahabad Bench of the Tribunal, who decided the O.A on 4.1.95 with the direction to the respondents to conclude the enquiry within six months from the date of receipt of a copy of the order. It is stated that when the enquiry was not concluded within the stipulated time, the applicant filed another O.A before Allahabad Bench of the Tribunal which was also disposed of by the Tribunal. It is further stated that the Enquiry Officer recorded the statement of complainant Smt. Rama Devi and Natnu Ram but these statements were recorded behind the back of the applicant and the Enquiry



Officer completed the enquiry and submitted the enquiry report dated 24.11.97. The applicant was supplied copy of enquiry report to which he submitted a detailed reply and written submissions but without any basis and support of evidence, the disciplinary authority passed the impugned order dated 16.2.2000. It is stated that the allegations against the applicant was that without dissolution of his first marriage he contracted second marriage without permission of the Central Govt but there was no evidence on record to support these allegations and as such the punishment so imposed upon the applicant, is not sustainable in law. It is also stated that the punishment so imposed is also disproportionate to the gravity of charges. Therefore, the applicant filed this O.A for the relief as above.

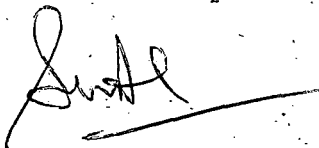
3. Reply was filed. It is stated in the reply that the applicant failed to produce any evidence regarding the fact that his first marriage was dissolved in the year 1973 and he contracted the second marriage in February 1974, before entering into government service, whereas, the applicant contracted second marriage in 1975, after he entered into the government service. It is also stated in the reply that the first enquiry officer did not hold the enquiry in accordance with the provisions contained in CCS(CCA) Rules, therefore, denovo enquiry was ordered, in terms of Rule 15(1) of CCS(CCA) Rules, 1965. It is stated that the statements of Smt.Rama Devi and Sh.Nathu Ram were recorded in the absence of the applicant but the applicant never prayed for cross-examination of these witnesses, therefore, the enquiry officer has rightly reached to the conclusion that the charge levelled against the applicant is fully established and the disciplinary authority rightly imposed



the punishment of compulsory retirement upon the applicant. It is stated that the applicant was given full opportunity of hearing and to prove the fact that he contracted second marriage only after dissolution of first marriage but the applicant failed to prove the same. Therefore, he cannot blame the respondents and thus, the applicant has no case.

4. During the argument, the learned counsel for the applicant vehemently urged (i) that the department failed to establish the fact in the departmental enquiry that the applicant contracted the second marriage in February 1975, after entering into the Govt service. Therefore, it is a case of no evidence and finding of the enquiry officer holding the applicant guilty is thus perverse and the punishment so imposed on such finding is also perverse and not sustainable in law and that (ii) if for the sake of argument this Tribunal reaches to the conclusion that the applicant was rightly held guilty of the charges levelled against him in that case the punishment imposed upon the applicant is disproportionate to the gravity of the charges. In support of his contentions, he has referred (i) Laxman Singh Vs. State of Rajasthan & Ors, 1998(3) WLC (Raj.H.C) 448, (ii) Prakash Babu Bajpai Vs. UOI & Ors, 1995(3) WLC 307 (iii) Prabhu Lal Agarwal Vs. State of Raj. & Ors, 1991(2) WLC 469, (iv) M.K.Soni Vs. State of Raj. & Ors, 1991(2) WLC 481 and Kuldeep Singh Vs. Commissioner of Police & Ors, (1999) 2 SCC 10.

5. On the other hand, the learned counsel for the respondents supported the action of the enquiry officer as well as the disciplinary authority and contended that the disciplinary authority has rightly imposed the punishment of compulsory retirement upon the applicant, after full



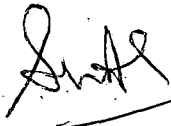
application of mind, on the basis of evidence on record and finding of the enquiry officer, therefore the same is not in any way calls for interference.

6. We have given anxious consideration to the rival contentions of the parties and also perused the whole record.

7. Generally High Court/Tribunal while exercising the powers of judicial review cannot normally substitute its own conclusion and the High Court/Tribunal does not act as appellate authority on the order of punishment passed by the disciplinary authority. But if the punishment imposed by the disciplinary authority or appellate authority has been passed without observance of the principles of natural justice and when it is observed that reasonable opportunity of hearing is denied or punishment imposed is totally disproportionate to the proved misconduct, the interference is called for.

8. In catena of judgments, the legal position has been discussed by the Hon'ble Supreme Court from time to time.

9. In B.C.Caturvedi Vs. UOI, 1995(6) SSC 749(3) the Apex Court held that the High Court or Tribunal while exercising the power of judicial review cannot normally substantiate its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charge for High Court or Tribunal, it would be appropriately mould to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent reasons in support thereof.



10. In Indian Oil Corpn. Vs. Ashok Kumar Arora, 1997(3) SCC 72, Hon'ble Supreme Court held that High Court in such cases of departmental enquiry and findings recorded therein does not exercise the powers of appellate Court/Authority. The jurisdiction of High Court in such cases is very limited, for instances - (i) where it is found that domestic enquiry is vitiated by nonobservance of the principles of natural justice, (ii) denial of reasonable opportunity and if findings are based on no evidence, and (iii) punishment is totally disproportionate to the proved misconduct of an employee.

11. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999(1) SLR 283, Hon'ble Supreme Court held that 'normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry, but if the finding of guilt is based on no evidence it would be perverse finding and would be amenable to judicial scrutiny. The findings recorded in domestic enquiry can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on any evidence on record or no reasonable person could have come to such findings on the basis of that evidence.'

12. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 227, Hon'ble Supreme Court held that one the finding of fact based on appreciation of evidence are recorded - High Court in writ jurisdiction may not normally interfere with those findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court - High Court cannot

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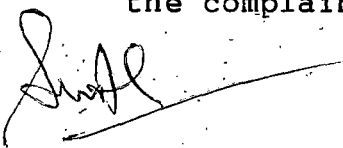
substitute its own conclusion with regard to the guilt of the delinquent for that of departmental authorities unless the punishment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

13. In Syed Rahimuddin Vs. D.G, CSIR & Ors, 2001(3) ATJ SC 252, Hon'ble Supreme Court held that the finding of facts arrived at in disciplinary enquiry the interference by the Court is permissible only when there is no material for the said finding or conclusion or on material available no reasonable man can reach to such conclusion.

14. In the instant case, after perusal of the record, it becomes abundantly clear that the first enquiry officer held the applicant not guilty for the charges levelled against him and the disciplinary authority did not agree to this enquiry report and ordered denovo enquiry. In the denovo enquiry, the applicant was held guilty of the charges and punishment of compulsory retirement was imposed upon him. On a perusal of the enquiry report, it appears that decision of the enquiry officer to hold the applicant guilty is nothing but based on no evidence, hence perverse. The conclusion drawn by the enquiry officer is only based on one judgment given by Additional Munsif & Judicial Magistrate, Jaipur District, Jaipur in a petition filed by Rama Devi under Sec.125 CrPC and in this order it appears that the complainant version is only hear-say which is reproduced as under:

मेर सायल ने 16-2-75 को दुबारा शादी कर ली बताई जाती है।

It has also not been made clear that who has stated the complainant about the date of second marriage contracted





by the applicant. Therefore, on this basis, it cannot be at all established that the applicant contracted the second marriage on 16.2.75. Another evidence before the Enquiry Officer was the statements of complainant Rama Devi and her father Nathu Ram. These statements were given in the year 1996 for the incident of the year 1975. In these statements, date of second marriage as contracted by the applicant is not mentioned. Admittedly, these statements were recorded by the Enquiry Officer in the absence/behind the back of the applicant and no opportunity of cross examining these two witnesses were afforded by the Enquiry Officer. Therefore, on such uncrossed testimony of such witnesses, the charge levelled against the applicant cannot stand proved, particularly when by these statements also it cannot definitely concluded whether second marriage contracted by the applicant has been solemnized before or after joining the services. Not only this but the disciplinary authority is also not definite at the time of passing the order dated 16.2.2000, whether the applicant contracted the second marriage while in service, without permission of the Central Govt, as it has been mentioned in the order dated 16.2.2000 that "It is, therefore, established that either the charged officer has given wrong declaration at the time of joining service in 7/74 or has married second time while in service, in 2/75 without permission of Central Govt."

15. In our opinion, the opinion of UPSC is also based on surmises and conjectures and not based on any reliable and convincing evidence. Therefore, on the basis of the evidence available before the enquiry officer, no other conclusion can be drawn except that the applicant was held guilty on the basis of surmises and conjectures and there was no

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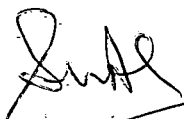
direct reliable and convincing evidence before the enquiry officer to reach to the conclusion that the applicant contracted second marriage while in service, without permission of the Central Govt. Therefore, in our considered opinion, holding the applicant guilty for the charge levelled against him by the enquiry officer and decision of the disciplinary authority, imposing the punishment of compulsory retirement upon the applicant, is nothing but perverse and liable to be quashed.

16. The applicant was charge-sheeted in the year 1987 under Rule 14 of CCS(CCA) Rules, 1965 for the alleged misconduct of 1975 based on complaint of his first wife made in the year 1985 and the order of the disciplinary authority was passed in February 2000. It appears from the order of the disciplinary authority dated 3.12.92, the report of the first Enquiry Officer exonerating the applicant was not accepted by the disciplinary authority on the ground that the Enquiry Officer has not gone into details about the legality and authenticity of the certificate issued by the Gram Panchayat as well as the customs prevailing in the community of the charged officer and in the absence of the legal declaration from the district authorities or Court of Law. The Presenting Officer failed to secure the attendance of the maker(s) of the certificate issued by the Panchayat. Having not done so, the presumption would be that the prosecution has accepted the authenticity of the certificate. The Presenting Officer also failed to establish the customs prevailing in the community of the charged officer but instead of establishing the fact, the burden appears to have been shifted to the charged officer. Notwithstanding the order of the disciplinary authority

*Smt*

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seeking inquiry into these two aspects, the enquiry has been conducted from the very beginning, i.e. the stage of explaining charge and seeking from the applicant acceptance or denial of the charge. The second Enquiry Officer, as per the order of the disciplinary authority, should have conducted the enquiry from the stage of examination of maker(s) of the document and allowing the prosecution to adduce evidence relating to the customs prevailing in the community of the charged officer. But doing denovo enquiry by the second Enquiry Officer, is neither permissible under rules nor in law. The first Enquiry was concluded in the year 1992 and the second enquiry concluded in the year 1996 and thereafter, the impugned order dated 16.2.2000 was passed. It took about 13 years to complete the proceedings. There is nothing on record to show that the applicant was responsible for the delay. Under these circumstances, such long delay without proper explanation and for a cause of action that arose around 1975, would certainly be to the prejudice to the applicant. Based on what is stated above, we are of the view that the order of the disciplinary authority which is based on de-novo enquiry conducted by a different Enquiry Officer, after the applicant was exonerated by the first Enquiry Officer and that too passed after about 13 years of issue of chargesheet without proper explanation and for a cause which arose about 25 years back is not sustainable in law.

17. It is worthwhile to mention here that the applicant from the very beginning is asserting that his first marriage took place in the year 1959, when he was 14 years of age and stated that this marriage was void, as per the provisions given in Sec.11 of the Hindu Marriage Act, 1955 and this

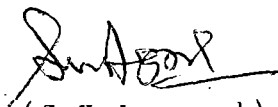
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marriage was dissolved as per customs and usages prevailing in his community, in the year 1973 and thereafter, he contracted second marriage in February 1974. In support of his contention, the applicant produced certificate issued by the Sarpanch, Gram Panchayat, Norangpura, but the Enquiry Officer while giving his report, did not take note of the assertion made by the applicant and the certificate issued by the Sarpanch, Gram Panchayat, Norangpura and held the applicant guilty on the basis of surmises and conjectures. In the same way, the disciplinary authority imposed the punishment on the basis of such enquiry report which was based on no evidence. Therefore, the findings of such enquiry and punishment imposed on the basis of such enquiry report is perverse and liable to be quashed.

18. We, therefore, quash the order dated 16.2.2000 (Annex.A1) by which penalty of compulsory retirement has been imposed upon the applicant. As the operation of the impugned order dated 16.2.2000 was stayed by the orders of this Tribunal dated 9.5.2000, therefore, no further order is necessary regarding reinstatement of the applicant and consequential benefits. No order as to costs.

  
(H.O.Gupta)

Member (A).

  
(S.K.Agarwal)

Member (J).