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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 3/96

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SECTION OFFICER (Judl.)

Shah
23.1.18

ORIGINAL APPLN.NO.

8 OF 1996

TRANSFER APPLN.NO.

OF 1996

CONT EMPT APPLN.NO.

OF 1995 (IN

NO.)

REVIEW APPLN.NO.

OF 1995 (IN

NO.)

MISC.PETITION NO.

OF 1995 (IN

NO.)

..... Rup. Ram Das APPLICANT(S)

-VS-

..... H. O. I. Ram RESPONDENT(S)

For the Applicant(s)

... Mr. R.P. Sarma

Mr. H.K. Barishya

Mr. R.K. Pradhan

Mr.

For the Respondent(s)

Mr. G. Sarma, Add. Case.

OFFICE NOTE

DATE

ORDER

This application is in
form and within time

C.F. of Rs. 50/-

deposited vide

IPO/BI No. 311280

Dated 2.1.96

16.1.96

Mr R.P. Sarma for the applicant.

The application is taken up for
disposal at admission stage.Heard Mr R.P. Sarma for the applicant.
Judgment delivered. The application is rejected.
Detailed order contained in separate sheets.

Vice Chairman

Member

nkm

7/6

Copy of order dt.
16.1.96 issued to
the parties along with
the parties counsel.sch
7/6

vide D.No. 1315 & 1317

add. 11/6/96.

OFFICE NOTE

DATE

ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI-5

O.A.No.8 of 1996

Date of decision 16.1.1996

(AT ADMISSION STAGE)

Shri Rup Ram Das

PETITIONER(S)

Shri R.P. Sarma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Shri G. Sarma, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether the Judgement is to be circulated to the other Benches?

M. G. Chaudhary
Judgement delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.8 of 1996

Date of decision: This the 16th day of January 1996
(At Admission Stage)

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri Rupram Das,
Refrigerator Mechanic,
Office of the Garrison Engineer (Air Force),
Jorhat, Assam.

.....Applicant

By Advocate Shri R.P. Sarma.

- versus -

1. Union of India,
Through the Secretary,
Department of Defence,
New Delhi.

2. Brig,
Chief Engineer (A.F.),
Shillong Zone,
Shillong.

3. Colonel,
Commander Works Engineer (A.F.),
Jorhat, Assam.

.....Respondents

By Advocate Shri G. Sarma, Addl. C.G.S.C.

.....
O R D E R

CHAUDHARI.J. V.C.

Heard Mr R.P. Sarma, learned counsel for the applicant.
The applicant has been removed from service as Refrigerator Mechanic working under the Commander Works Engineer (AF), Jorhat, on proof of charge of bigamy in a disciplinary proceeding held against him in accordance with the rules.

2. On a complaint filed by Smt Sadali Das alleging that during the subsistence of her marriage with the applicant he married another woman, Nivedita Das, A chargesheet was issued under Sub-rule (2) of Rule 14 of the CCS (CCA) Rules, 1965, and an Enquiry Officer was appointed. Bigamy is a misconduct under Rule 21 of the Central

hell

Civil Services (Conduct) Rules, 1964. The applicant participated in the enquiry. The charge stated that he had entered into bigamous marriage, hiding the fact of his first marriage as reported by his first wife, through the application received in GE(AF), Jorhat on 17.7.1991 making him liable for disciplinary action. The applicant filed a reply dated 12.9.1991. Prior to framing of the charge the disciplinary authority caused a verification ^{made} into the fact ~~made~~ by the local police. The charge was framed only after that report was received. The applicant denied the charge and alleged that he could not understand the English language properly and help of another individual may be given to him. He contended that Smt Sadali Das was not his married wife according to Hindu Rites and that she had lived with him during his minority.

3. A document ^{dated 12.9.91} came to be produced before the Enquiry Officer in which the applicant had made the following statement:

".....Smt Sadali Das was my wife but no social marriage had taken place during 1972. Smt Sadali Das left me in 1974 (After about one and half year). Smt Sadali Das had not come back to me for the next five years. Therefore I married Smt Nivedita Das during 1978. But when I was away from my Native place Smt Sadali Das came to my father during 1980 or 1981 which date I do not remember correctly. My parents had looked after her. I had not met her after 1974."

4. At the enquiry a Marriage Certificate relating to the marriage between the applicant and Smt Sadali Das was produced. The signatures of the local residents (which implies that their statement was recorded) collected by the police during the verification of the fact were produced. The police verification was also produced. The representation of the applicant dated 12.9.1991 and his defence statement form part of the record. The Enquiry Officer also recorded the statement of the applicant in question - answer form on 26.2.1993. His earlier statement dated 16.11.1992 was brought to his notice. He was questioned as to how he was stating that he did not know English when his earlier statement dated 16.11.1992 was drawn in English and when he stated that his educational qualification was HSLC. On that basis the authority

deduced.....

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deduced that he was able to read, write and understand English. He, therefore, concluded that his admission contained in his statement ^(noted above) dated ~~12.01.1994~~ was valid.

5. The applicant made a wild allegation that Sadali Das was in the habit of having illicit relations with different persons. When he was asked to prove that wild allegation he stated that he had no proof. He was also confronted with his statement dated 16.11.1992 in which he had stated that Sadali Das had two children born to her. In reference to that he stated that he was referring to the period when she left him in 1974 onwards. He, however, admitted that one child was delivered by Sadali Das in 1973 when she was living with him. He also admitted that his father was providing maintenance expenses to her in cash and kind. He admitted that he married Nivedita Das in the year 1979, but had not informed the office or department where he was working about that fact. He, however, admitted that he had nominated her in the nomination form regarding the names of family members as part of the service book. He asserted that he was having only one wife living with him, namely, Nivedita Das. The applicant had contended that there was no legal marriage between him and Sadali Das and that their association was only a type of arrangement with the consent of his parents, that Sadali Das had remained silent for a long time shows that her complaint was an afterthought and motivated, that the marriage certificate produced by her did not spell out the date of marriage and did not bear official seal, that the signatures of the villagers appearing on a sheet of paper did not refer to the fact of marriage and that, therefore, he had not committed the alleged misconduct.

6. After taking into account the entire evidence and the statement of the applicant the Enquiry Officer concluded that it was evident from the admissions both by the applicant and Sadali Das that they lived together for sometime probably from 1972 to 1974, that their association was termed as marriage in the marriage certificate

produced.....

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produced by Sadali Das and in what was signed by the local public, that the verification of the police of these facts was found originating from the same villagers who had termed the association as a legal marriage, that the conduct of the applicant in not informing about the marriage between him and Nivedita Das, his submitting nomination form and including her name in the family members and the circumstance of the birth of the children was sufficient material to hold that "his earlier living with ^{Sml-} Sadali Das is inambiguously established as a legal marriage" and "his ^{present-} association with Nivedita Das too proves to be an authentic legal marriage."

7. The Disciplinary Authority accepted the above findings and held that the charge was proved and the applicant was guilty of bigamy which was a misconduct under the Central Civil Services (Conduct) Rules, 1964. He, therefore, imposed penalty of removal ^{from} of service of the applicant by order dated 26.6.1995, Annexure-B. An appeal preferred by the applicant to the Chief Engineer (AF) on 26.7.1995 has been rejected by order dated 30.9.1995, Annexure-D. The applicant seeks to challenge the aforesaid orders.

8. Mr R.P. Sarma, the learned counsel for the applicant, submitted that the authorities have erroneously held that there was a legal marriage between the applicant and Sadali Das and therefore, the finding that the charge of bigamy was proved is perverse and illegal and is liable to be set aside. The learned counsel submitted that it was demonstrated by the applicant at the enquiry that Sadali Das was only living with him for sometime and that was merely a sort of an association together and it was not a legal marriage so as to attract the charge of bigamy when he married Nivedita Das. He submitted that since the enquiry was started on the alleged complaint of Sadali Das the burden rested on her to prove the legal marriage which according to the learned counsel she had failed to discharge. Mr Sarma further submitted that the signatures of the villagers and/or whatever may have been produced could only lead to the inference that the applicant and Sadali Das had been living together for sometime

and.....

[Signature]

and it was only their inference that they were legally married and that was not sufficient to prove that there was a legal marriage between them. The learned counsel also makes a grievance that the applicant was not given adequate assistance for conducting his defence. He also submitted that the statements of the applicant had been misconstrued as admissions of adverse facts. He submitted that the conclusions of the Enquiry Officer are more based on moral grounds and biased and are not based on any legal principle which has resulted in depriving the applicant of the benefit of his long service of 21 years.

9. The grounds urged by Mr R.P. Sarma would be required to be examined in detail in a civil proceeding or a criminal prosecution for bigamy. Presently, we are concerned with a disciplinary enquiry conducted according to the rules. We do not see any illegality or perversity in the conduct of the proceedings in accordance with the rules. It would not, therefore, be open to us to sit in appeal over the findings of fact recorded by the Enquiry Officer and confirmed by the Appellate Authority. We are of the opinion that the Enquiry Officer was justified in acting ^{on} ~~according to~~ the following 6 circumstances to arrive at his conclusions and that can be said to be a reasonable exercise of his jurisdiction. These circumstances are:

i) In his statement dated 12.9.1991 read with statement dated 16.11.1992 that Sadali Das was his wife, but no social marriage had taken place during 1972, The use of words 'my wife' is significant. What he ^{thus} ~~then~~ ^{is} says that there was no social marriage, but what he does not say is that there was no marriage at all in any form.

ii) It appears that in the statement he was referring to the aforesaid fact by reference to one Smt Sadari Das and not Smt Sadali Das. That, however, could be due to ^m ~~a~~ correctly spelling the name in the record. The fact, therefore, remains that he had admitted her to be his wife although the fact of social marriage was denied.

iii) The admission of the applicant that Sadali Das had delivered a child in 1973 when she was living with him.



iv) The police verification and the opinion of the villagers or local public indicated that the applicant and Sadali Das had lived together as husband and wife. A presumption, therefore, will arise in favour of the marriage and legitimacy of the birth of the child.

v) A marriage certificate was produced by Sadali Das and only formal objections were taken by the applicant to its authenticity and, therefore, it cannot be held that the Enquiry Officer could not take it into account.

vi) Admittedly, the parents of the applicant had been maintaining and looking after Sadali Das which is a circumstance strongly pointing to the fact that they treated her as a legally married wife of the applicant.

10. We are not impressed by the argument that the applicant who has passed HSLC examination could not understand the nature of the proceedings or effectively participate therein. That is ruled out in the manner in which he has answered the questions put to him by the Enquiry Officer. We cannot, therefore, interfere with the findings recorded by the Enquiry Officer confirmed by the Appellate Authority.

11. Mr R.P. Sarma submitted that in any event having regard to the length of service of the applicant and the great hardship to which he will be put as he will be required to maintain two wives and the children coupled with the loss of service a lesser penalty than removal from service may be considered. It is, however, not possible to accept this submission having regard to the nature of misconduct which attracts the punishment of removal from service.

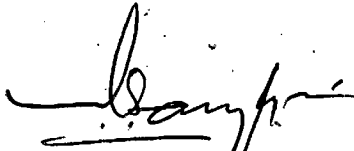
12. It does not appear that either the applicant or Sadali Das has adopted any civil proceeding. It also does not appear that Sadali Das has prosecuted the applicant in a criminal court for the offence of bigamy so far. We, therefore, make it clear that this order


is.....

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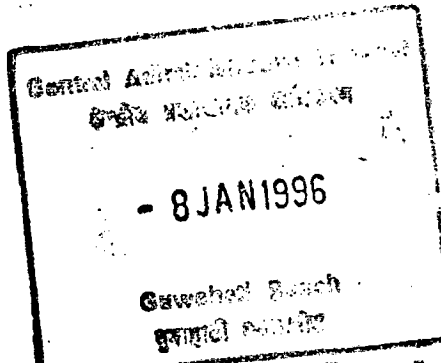
is confined only to the disciplinary proceeding and the penalty imposed upon the applicant as a disciplinary measure and would not affect the civil rights of the parties.

13. For the aforesaid reasons the application is rejected.


(G. L. SANGLYINE)
MEMBER (A)


(M. G. CHAUDHARI)
VICE-CHAIRMAN

nkm



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH::

(An application under section 19 of the Administrative Tribunal Act, 1985)

O.A. No. 8 of 1995

Shri Rup Ram Das Applicant

- versus -

Union of India & ors... Respondents

I N D E X

<u>Sl. No</u>	<u>Description of documents</u>	<u>Pages</u>
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2.	Verification	10
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6.	Annexure - D	29

Recd
Gopal Sarma
Asst. Secy
C.A.T.
LHY-
8/1/96

Filed by -
Through
H.K. Baruah
Advocate
8/1/96

Filed by -
Through
H.K. Bairhyan
Advocate
8/1/96

District: Jorhat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

CASE NO O A 8 / 96

Details of Application:

1. Particulars of the applicants:

- (i) Name of the applicant : Shri Rupram Das
- (ii) Name of father : Shri Madan Das
- (iii) Designation and office: Refrigerator Mechanic ,
to which employed Office of the Garrison
Engineer (Air Force)
Jorhat , Assam.
- (iv) Office Address : Office of the Garrison
Engineer (Air Force)
Jorhat, Assam
- (v) Address for service : Shri Rupram Das
of all Notices Rowroia, Jorhat,
Dist.- Jorhat, Assam

2. Particulars of the respondents:

- (i) Name and/or Designation: (i) Union of India
of the Respondent through the Secretary
Department of Defence,
New Delhi.

:(ii) Brig,
Chief Engineer (A.F)
Shillong zone,
Elephant Falls Camp
P.O. Nonglyer ,
Shillong -793009
MEGHALAYA.

:(iii) Colonel,
Commander Works
Engineer (A.F.P
Jorhat-785005, Assam

SRI RUP RAM DAS
Applicant

(ii) Office Address of : As above
the Respondents

(iii) Address for service : As above
of Notices

3. Particulars of the order against which
Application is made for

(i) Order No. 11001/13/RRD/40/EIC

dated 26.6.1995 communicated by
Col. Commander, Works Engineer (AF)
Jorhat-785005, Assam

And (ii) Order No. 81878/18/222/ELCOW

dated 30.9.1995 communicated by
Brigal, Chief Engineer (AF) Shillong

(ii) Passed by: (a) A. P. Shukla ,
Colonel,
Commander Works Engineer (AF)
Jorhat, Assam.

(b) A. S. Madan,
Brig,
Chief Engineer (AF)
Shillong, Meghalaya.

(iii) Subject in : The applicant Shri Rupram Das
brief : Refg. Mechanic, is guilty for
committing bigamy under Rules 21
of CCS (conduct) Rules 1964.

4. JURISDICTION of the Tribunal :

The applicant declares that the
subject matter of the order against
which the applicant wants redressal
is within the jurisdiction of the
Tribunal.

Shri RUP RAM DAS

5. Limitation : The applicant further declares the applicant is with the limitation prescribed in section 21 of the Administrative Act, 1985.

6. Facts of the Case :

(1) That the applicant is invoking the Jurisdiction of this Tribunal under section 19 of the Administrative Tribunal Act, 1985 for the enforcement of the fundamental right as well as legal rights which have been violated by the arbitrary action of the Respondents.

(2) That the applicant who served as Refrigerator Mechanic under Garrison Engineering Department (A/F) Jorhat, for more than 21 years.

(3) That one Smti Sadari Das on 17.7.1991 filed an application before the Garrison Engineer (A/F) Jorhat, charging the applicant that he enforced into bigamy's marriage hiding the fact of earlier marriage.

(4) That on the basis of the complaint filed by Smti Sadari Das an incompetent enquiry was conducted by the Respondent - Authority.

contd...p.4

RUP RAMDAS

(5) That purportedly on the basis of the enquiry report the applicant was terminated by the commander works Engineers (A/F) Jorhat vide his order No. 11001/13/RRD/40/Elc dated 26th June 1995, overwhelmingly in favour of the applicant.

A copy of the enquiry report and a copy of order dated 26.6.1995 is annexed herewith and marked as Annexure 'A' and 'B' respectively.

(6) That against the said order of termination passed by the Commander works Engineer (A/F), Jorhat dated 26.6.95 the applicant preferred an appeal before the Chief Engineer A/F, Shillong Zone on 26.7.1995, (the appellate authority).

A copy of the appeal petition filed before the Appellate Authority is annexed herewith as Annexure - 'C'.

(7) That the appellate Authority without application of mind on the points raised rejected the appeal petition filed by the petitioner vide order No. 81878/18/222/Elcan dated 30.9.1995 and the same was communicated to the applicant in the month of November 1995, which was received by him on 25/26.11.1995.

contd..p.5

RUP RAM DAS

A copy of order dated 30.9.1995 passed by the Chief Engineer (A/F) is enclosed herewith as Annexure - 'D'.

(7) That the applicant states that he never committed the misconduct as alleged. He never married the said Sadari Das. The Respondents did not apply their mind to the facts of the case. In the enquiry the fact of bigamy was never proved. The enquiry report incorrectly and in contradiction to its findings, concluded that the charges as levelled were proved. The relevant portion of the enquiry report is quoted below :

'FINDINGS OF INQUIRY'

"on the basis of documentary and oral evidence adduced in the case before me and in view of the reasons given above I hold that the charges against MES No. 238442 Shri Rup Ram Das, Refg. Mech. of GE(AF), Jorhat will stand proved provided :

(i) His earlier living with Smti Sadari Das is unambiguously established as a legal marriage, and

(ii) His present association with Smti Nivedita Das, too, proves to be an authentic legal marriage."

The above findings cannot be the basis for dismissal from service. From the findings of the

enquiry report itself it crystalises that the factum of bigamy was never proved.

7. Relief/Reliefs sought :

In view of facts stated above the applicant pray for the following relief/reliefs

- 1) To quash/set aside the impugned orders dated 26.6.1995 and 30.9.95.
- 2) To direct the respondent to reinstate the applicant in his service with all benefits of back wages, continuity of service, etc.
- 3) Any other relief or reliefs as this Hon'ble Court may fit and proper to grant.
- 4) Cost.

The applicant challenges the impugned order dated 26.6.1995 and 30.9.95 and the arbitrary action/inaction of the respondents on the following amongst other :

G R O U N D S

- i) For that the Respondents acted illegally in passing the impugned order without going through the records and the materials therein.

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ii) For that the order of termination is not based on records and the enquiry report. The enquiry report does not say conclusively that there was any bigamy.

iii) For that the enquiry report the list of witnesses is shown 'Nil' but the at page 1 of the "Proceeding of Enquiry" there is reference of "documentary and oral evidences adduced before me (the E.O) "

So who were the witnesses those have been examined behind the applicant is not known to the applicant. This is sufficient enough to infer that the enquiry was incompetent and violative of procedures prescribed by the rules.

iv) For that the Enquiry Officer appears to be biased for the reason that he himself examined and cross-examined the charged officer.

v) For that since there was no witnesses to prove the charges or prove the documents, the charges were never proved and the charged officer is entitled to be acquitted of the alleged misconduct.

vi) For that from the documentary evidence, it is clearly established that there was no marriage with Sadari Das. The alleged marriage was not registered nor was it performed in accordance with the Hindu rites and Hindu Marriage Act.

RUP RAM DAS

vii) for that the illegal main complaint Smti Sadari Das was never produced as witness in the Enquiry proceeding, though the entire proceeding was initiated on the basis of her alleged complaint. As such the charge of bigamy has not been proved by the prosecution.

This is evident from so called enquiry Report itself. As such the entire proceeding is vitiated and so the impugned orders.

viii) for that the so-called enquiry is violative of Principle of natural justice and fairness, for no defence assistant was given to the applicant.

ix) for that the E.O. in his report at page 8 of "Analysis and Assessment of Evidence" at paragraph (d) gave a finding that "Shri Rupram Das had not married Smti Sadari Das legally or by social Customs".

This is sufficient to acquit the charged officer. At paragraph (g) the so-called marriage Certificate of Sadari Das to ext (4) and (11) were not found to be by the competent Authority.

so there was no marriage and as such no bigamy.

x) For that the "Finding of Enquiry" of Enquiry" the E.O. concludes as under" that the charges against Smti Rup Ram Das, Refg. Mechanic will stand proved provided :-

RUP RAM DAS

(i) his earlier living with Smti Sadari Das, is unambiguously established as a legal Marriage; and
(ii) his present association with Nivedita Das, too proved to be an authentic legal marriage" such a conditional enquiry report cannot be the ground for termination from service.

xi) For that the applicant has served for more than 21 years and he should not have been dismissed from service on such trumped up charges and on the basis of incompetent enquiry report.

xii) For that it is further submitted that the findings of facts with impugned order are incorrect confusing and misleading, the impugned orders suffer from non application of mind on the legal and factual aspect involved in the case.

xiii) For that at any rate the proceedings and the impugned orders are bad in law and in fact are ~~bad in law and~~ liable to be set aside.

9. Details of the remedies exhausted :-

The applicant declared that he has availed of all the remedies available to him under relevant service rules.

contd...p.10.

RUP RAM DAS

10) Matter not pending with any other court etc:

The applicant further declared that the matter regarding which this applicant has been made is not pending before any court of law or any other authority or any other bench of Tribunal.

11. Particulars of Bank Draft/postal orders in respect of application fees:

(a) Name of the Bank on which Drawn: -

(b) Demand Draft No :

or

No of Indian Postal Order/Orders

809311280

i) Name of the Issuing P.O.:-

ii) Date of issue of P.O/P.O's:-

iii) P.O. at which payable :-

12. Details of Index

An Index in duplicate containing details of the documents to be relied upon its enclosed :-

13. List of Enclosures :

As shown in the Index to documents above.

VERIFICATION

I, Sri Rup Ram Das son of Sri Madan Das, aged about 44 years resident of Rowrai, Jorhat in the district of Jorhat, Assam do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts .

SRI RUP RAM DAS
Signature of Applicant.

RUP RAM DAS

ANNEXURE - *A

CONFIDENTIAL

Garrison Engineer(Vayusena)
Garrison Engineer (Airforce)
Jorhati - 785005

C.135/RRD/CASE/205/EIC

15 Feb '95

MES-238442

Shri Rup Ram Das, Refg/Mech
(Through AGE E/M(AF) Jorhat

FORWARDING OF ORDER

1. A copy of Inquiry report on the above order, received from C.W.E.(AF) Jorhat under letter No. 11001/13/RRD/29/EIC dated 14th Feb 95 is forwarded herewith for your representation if any.
2. You have given time for 10 days to submit your representation on the above Inquiry report from the date of receipt of Inquiry report :
3. Forward acknowledgement in duplicate to this office in token of having received the Inquiry report alongwith representation if any through the AGE E/M (AF) Jorhat.

Sd/-

(P. Rajan)
Major

Garrison Engineer(Airforce)

Encls: 12 sheets
(complete)
Inquiry report)

Copy to:

CWE(Airforce) Jorhat - for information w.r.t your HQ
letter No. 11001/13/RRD/29/29/EIC
Dt. 14 Feb '95

AGE E/M (A/F) Jorhat - A copy of Inquiry report enclosed with the original copy address to Sri Rup Ram Das, Refg/Mechanic working in your sub Divn may please be handed over to him personally and obtain acknowledgement in duplicate in token of having received the Inquiry report and forward to this Office for transmission to CWE(AF) Jorhat. You are requested to obtain the copy of Inquiry report alongwith representation from the individual within 10 days from the date of handing over of documents to him by your office for transmission to CWE(AF) Jorhat

CONFIDENTIAL

Attested
8.1.96

INQUIRY REPORT

On

The charges framed against Mec.No. 233442 Shri Rup Ram Das Refg Mech of GE(AF) Jorhat Authority CWE (AF) Jorhat 11001/RRD/09/E, C dt. 23.12.92.

List of Exhibits

Inquiry Officer sig,

Exhibit No. 1 : Memolendum of Charges vide CWE(AF) Jorhat letter No. 11001/RRD/04/E C dated 05-11-92.

Exhibit No. 2 : Annexure I to IV to Exhib (1)

Exhibit No. 3 : Smti Sadali Das clarification

✓ Exhibit No. 4 : Marriage Certificate Received with Exhibit. No. 3

✓ Exhibit No. 5 : Local Public ~~Organization~~ signature Received with Exhibit No. 3

Exhibit No. 6 : Representation/complaint of Smti. Sadali Das

Exhibit No. 7 : Representation of Sri Rup Ram Das dt. 12.9.91

✓ Exhibit No. 8 : Police Verification

Exhibit No. 9 : Certificate of Sri Rup Ram Das to Department

Exhibit No. 10: List of Dependents submitted by Sri Rup Ram Das

Exhibit No. 11 : Defence statement by Sri Rup Ram Das Dated 16.11.92

List of witnesses :

Nil

Enclosures Twenty Four
(24) Sheets

(For proceedings of inquiry
Please turnover (obtain Exhibit)

Attested
8.1.96

PROCEEDINGS OF INQUIRY

Under Sub-Rule (2) of Rule No. 14 of CCS(CCA) I was appointed by CWE (AF) Jorhat as Inquiry Authority to Inquire into the charges framed against MES No. 233442 Shri Rup Ram Das Refg Mech. of CWE(AF) Jorhat vide Exhibit (1) above. I have since completed the Inquiry on the basis of the documentary and oral evidences adduced before me, prepared my Enquiry report as under :-

PARTICIPATION BY CHARGED OFFICER

2. The charged officer Sri Rup Ram Das participated in the Inquiry from beginning to end.

ARTICLES OF CHARGE.

3. The following articles of charge have been framed against Sri Rup Ram Das vide Exhibit No.1 :-

(a) that the charged officer Sri Rup Ram Das "entered into bigamous marriage, hiding the fact of earlier marriage as reported by his first wife, through an application received in GE(AF) Jorhat on 17.7.91 and that, this act of making him liable for disciplinary action.

(b) According to statement of imputation computation of

Sri Rup Ram Das was hiding the facts and falsifying the record vide Exhibit No. 2 (Annexure II) which was evident from Sri Rup Rad das reply dt. 12.9.91 vide

Exhibit No. 7 and police verification
vide Exhibit No. 8.

CASE OF THE DISCIPLINARY AUTHORITY

4. The disciplinary authority is convinced with the documentary evidence of Police verification vide Exhibit No. 8 and acceptance of the charge by charged officer vide exhibit No. 7. Disciplinary Authority, therefore framed the charges against Sri Rup Ram Das for his offence making him liable for disciplinary action. Disciplinary Authority before proceeding further ordered this Enquiry to benefit the charged officer for Natural Justice as per CCS (CCA) Rules.

CASE OF THE DEFENDANT

5. The charged officer Sri Rup Ram Das had refuted the charges vide Exhibit No. 11 and stated the following reasons for not accepting the charges :
that (a) he was not so literate to understand English language and therefore sought this help of an individual who wrote the things just reverse of his statements.

(b) Smti Sadali Das was not his married wife according to Hindu Rits and that she lived with him during his minority.

and that (c) Gaon bura cannot prove a marriage certificate. Thereafter the progress of Inquiry as recorded ~~the~~ dated 26th Feb 93 on day to day basis are as under :-

DAILY REPORT FOR 26th Feb 1993 :-

The Accused charged officer and the presenting officer are present for Inquiry. The details of Inquiry explained to them. Presenting officer produced the documents and stated that the charges are established .

The charged officer Sri Rup Ram das in defence of what presenting officer had stated and produced the document made the following statement
"Smti Sadali Das was my wife but no social Marriage had taken place during 1972. Smti Sadali Das left me in 1974 (After about one and half year) Smti Sadali Das had not come back to me for the next five years. Therefor I married Smti Mivedita Das during 1973."
But when I was away from my Native place Smti Sadali Das come to my father during 1980 or 1981 ^{date} which/I did not remimber correctly. My parents had looked after her. I had not met her after 1974."

The above statements are under stood by me and also explained to me in the language understood by me. Therefore I sign as correct.

Sd/- Sri Rup Ram Das

Sd/- Illegible

Sd/- Illegible

in violation of my
rights 1978
Sham Lal Prichanna
Adv.

28

QUESTION BY ENQUIRY OFFICER TO SRI RUP RAM DAS
ON 26.2.93 AND THEIR ANSWER

Q.1 DO you accept the charges flamed agains you. ?

Ans. No

Q.2 You had stated in your reply to charges vide Defince statement dtd. 16.11.1992 that you don't understand English and therefore your statement dt. 12th sept. 1991 is not correct. You have Expressed all these developments clearly in your statement dt. 16.11.92 again in English very properly. therefore please state whether your defence statement dated 16.11.92 is true or that of 12.9.91 ?

And - My defence statement dated 16.11.92 is true.

Q. 3- what are your educational qualification ?

And - H.S.L.C. passed in 1969 from Negtariting High School and not completed Pre-University from D.K.D College (Certificates not produced and not available in service Book)

Q. 4. What is your date of Birty ?

Ans.4 I don't remember correctly ,
01st March 1952 (According to declaration form)
26th Feb, 1952 (According to P II O No.14/20/73

Sd/- Illegible
Charged Officer

Sd/- Illegible

Sd/- Illegible
I.O.

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- 17 -

Q.5. You had alleged in your defence statement dt. 16.11.92 that Smti Sadali Das is habituated to live with different persons please substantiate your wild allegation with proofs.

Ans. No proof but I know personally.

Q. 6. According to your statement dt. 16.11.92 Smti Sadali Das got two children during this period. Please state the specific period that you are referring there in .

Ans. The specific period is when she left me in 1974 on words.

Q.7. According to your statements this day 12.02.93 you have stated that Smt. Sadali Das lived with you upto 1974. Did she conceive and deliver during the period that she lived with you.

Ans. Yes one child was delivered by her in 1973 when she lived with me.

Q.8. You had stated in your statement dt. 16.11.92 that "the petitioner is still providing maintenance ..." who was providing maintenance expenses to her and how ?

Ans. My father provided the maintenance expenses to her in cash and kind.

Sd/-
(Rup Ram Das)

Sd/-

Sd/- I.O.

Q.9 When did you marry Smt. Nibadity Das.

Ans. I did not remember the date, but I recollect that I married Smti Nibadita Das during 1979.

Q.10 Did you inform the department or office about your marriage with Smti. Nibadita Das during 1979 ?

Ans. I have not given in writing to department about my marriage with Smti. Nibadita Das during 1979 - but informed the office through nomination from (Presenting officer produced the list of family members records in service book whose xerox copy attached as Exhibit 10. It is noted that Date of Birth of Children is recorded as 21.1.80 and 6.2.92 and counter signed on 31 March 1979 before the stated date of births in service book since retired to presenting officer)

Q.11 In your defence statement dated 16.11.92 you had rejected and challenged the Marriage certificate produced by Smt. Sadali Das for the reasons that it was not issued in accordance with Special Marriage act by Register of Marriages please produce the requisite certificate for your Marriage with Smti Nibadita Das during 1979.

Ans. No I don't have such Marriage Certificate.

Sd/-

Sd/-

Sd/-

Q.12. Do you accept that you are having two wives living ?

Ans : I am having one wife living Smt Nibadita Das

Q.13. Do you want to state anything more to refute the charges framed against you ?

Ans. I have nothing further to state against the charge

Sd/-

Sd/- I.O.

The above questions and my 13 answers are true to the best of my knowledge and I sign this as correct and understood them in the language that is known to me.

Sd/- Rup Ram Das
26.2.1993

The charged officer Sri Rup Ram Das had not asked for any witness and stated that he had nothing further to state to the Inquiry Authority. Therefore the hearing was closed on 26.2.93 after recording the above statements and thirteen questions and thirteen answer (continued on page 8)

ANALYSIS AND ASSESSMENT OF EVIDENCE

6. The analysis and logical reasoning of evidence as is under :-

(a) Sri Rup Ram Das has passed Higher Secondary School leaving Certificate in 1969 and even attended College for Pre-University. He can read, write and understand English refer Answer No. 3 Therefore his admission of charge earlier vide exhibit No. 7 is valid.

contd...

(b) Sri Rup Ram Das reply to Q 2 vide Answer No. 2, affirming collectness of Exhibit No. 11 is not tenable.

(c) The charged officer had admitted his intimacy with Smti Sadari Das both in his defence statements dt. 12.9.91 exhibit No. 7 and statement dt. 16.11.92 Exhibit No. 11. His oral statement to Inquiry authority on 26.2.93 and his answer Nos 7 for having a child with her, are further assertions in this regard.

(d) Sri Rup Ram Das had not married Smt. Sadari Das legally or by social customs. This Association was only a type of arrangement with the consent of his parents Refer Exhibit No. 7 and 11 and his answer vide oral statement dt. 26.2.93.

(e) Maintenance in persons of Smti Sadari Das was also taken care vide the applications at Exhibit 4 Nos 6 and 3 and confirmed by charged officer vide Exhibit No 7 and 11 and Answer No. 8

(f) Smti Sadari Das remained silent for long time after her separation from Sri Rup Ram Das as her first application received in GE(AF) Jorhat office vide Exhibit No. 6 only on 17.7.91 vide Exhibit No. 2.

(g) The Marriage Certificate submitted by Smti Sadari Das at Exhibit No. 4 does not spell out the date of marriage and no office seal affixed. It is

(h) The signatures of the villagers submitted by Smt Sadari Das vide Exhibit No.5 are on a separate sheet and does not contain any reference to marriage.

(j) It is evident from the admissions both by Sri Rup Ram Das and Smt Sadari Das that they lived together for some time probably from 1972 to 1974 (refer her applications and Sri Rup Ram Das Regulations) This association is termed as marriage in exhibit No. 4 and 5 . The verification of Police for these facts as it exhibit No. 8 is again found originating from the same villagers who have turned this Association into a legal Marriage.

(k) Sri Rup Ram Das Marriage with Smt. Nibadita Das too lacking valid proof refer answer Nos. 10 and 11. He had not informed his marriage with Smt. Nibedita, to the department vide Answer No. 10, except submitting the nomination forms.

(l) Sri Rup Ram Das submitted the nomination form or list of family members vide exhibit No. 10 without any date . However the birth date of his two children in this document are recorded as 21.1.80 and 6.2.82 but was counter signed on 31.3.1979.

FINDINGS OF INQUIRY

1. On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons given above I hold that the charges against MES No. 238442 Sri Rup Ram Das Refg Mech of AGE(AF) Jorhat will stand proved provided :

(i) His earlier living with Smt. Sadari Das is inambiguously established as a legal Marriage.

and (ii) His present association with Smti. Nibedita Das too, proves to be an authentic legal Marriage.

sd/-

MES No. 143185
(C & R. KOTESWARA RAO)
SBSO?
INQUIRY OFFICER

Dt. 26th Feb. 1993.

Attested
RK
8.1.96

CONFIDENTIAL

Tele : AF 381

Commander works Engineers (AF)
Jorhat - 785 005 (Assam)

11001/13/RRD/40/Elc

dt. 26 June 95

O R D E R

1. WHEREAS, disciplinary proceedings were instituted against MES-238442 Shri Rup Ram Das, Refg Mech under Rule 14 of CCS (CCA) Rules 1965 vide CWE (AF) Jorhat Memorandum No. 11001/RRD/04/EIC dated 05 November 92;

2. AND, WHEREAS, the said Shri Rup Ram Das, Refg Mech submitted his defence statement dated 16 Nov 92 to the charge made and pleaded not guilty of the charge ;

3. AND, WHEREAS, Oral Inquiry was held to enquire into the charges framed against the said Shri Rup Ram Das, Refg Mech;

4. AND, WHEREAS, the Min of Law, Justice & CA, Deptt of Legal Affairs, Calcutta vide their letter No. MOL UO No. 42/95 dt. 10 Jan.95 concluded that the charges against the said Shri Rup Ram Das, Refg Mech is proved;

5. AND, WHEREAS, the undersigned after careful consideration of the inquiry report and all other relevant documents on records agrees with the opinion of the Min of Law, Justice & CA, and has come to the conclusion that the said Shri Rup Ram Das, Refg Mech is guilty for committee bigamy under Rule 21 of CCS (Conduct) Rules 1964;

contd...2.

Attested
Advocate
8.1.96

26

6. NOW, THEREFORE, the undersigned in exercise of the powers conferred upon him under Central Civil Services (Classification, Control & Appeal) Rules 1965 and Govt. of India Min of Def Order No. 5 (14)/79/D (Lab) dt. 16 Aug. 79 imposes upon the said Shri Rup Ram Das, Refg Mech the penalty of "Removal from service";

7. This order shall take effect from the date it is served upon the said Shri Rup Ram Das, Refg Mech or is deemed to have been served upon him;

8. The receipt of this order will be acknowledged.

(AP Shukla)

Col

Commander Works Engineers
(AF).

TO

MES-238442

&

Shri Rup Ram Das, Refg Mech

(Through GE (AF) Jorhat)

CONFIDENTIAL

Attested
Advocate
8-1-96

ANNEXURE - 'C'

Dated, the 26th July, 1995.

To

The Chief Engineer (AF)
Shillong Zone,
P.O. Nonglyer,
Shillong - 793 009.

(Through Proper Channel)

Sub : An appeal under Rule 23 of the Central Civil Services (CCA) Rules, 1965 against the order of termination dated 26.6.1995 passed by the Commander Works Engineer (A.F.) Jorhat.

Hon'ble Sir,

Humbly I beg to prefer this appeal against the order of termination dated 26.6.1995 passed by the Commander Works Engineer, (A.F) Jorhat.

2. That the order of termination is not based on records and the enquiry report. The enquiry report does not say conclusively that there was any bigamy.

3. That in the enquiry report the list of witnesses is shown "NIL", but at Page 1 of the "proceedings of Enquiry" there is reference of "documentary and oral evidences adduced before me (the E.O.)".

So who were the witnesses those have been examined behind my back.

4. That the Enquiry Officer appears to be biased for the reason that he himself examined and cross-examined the charged Officer.

contd...2.

Attested
R.R.
Advocate
8.1.96

5. That since there was no witness to prove the charges or prove the documents, the charges were never proved and the charged Officer is entitled to be acquitted of the alleged misconduct.

6. That from the documentary evidence, it is clearly established that there was no marriage with Sadari Das. The marriage was not registered nor was it performed in accordance with the Hindu ritas and the Hindu Marriage act.

The element of bigamy has not been established at all. There being no marriage, the question of bigamy does not arise.

7. That the alleged main complainant snti. Sadari Das was never produced as witness in the Enquiry Proceeding, though the entire proceeding was initiated on the basis of her alleged complaint. As such the charge of bigamy has not been proved by the prosecution.

This is evident from the so-called enquiry Report itself.

8. That legally speaking there has been no enquiry. No witnesses, no evidence, then how the charge was stated to be proved ?

9. That the so-called enquiry is violative of principle of natural justice and fairness, for no

for no defence assistant was given to me, although the department was represented by presenting officer, of high rank. I am totally un-acquainted with the procedures. I did not know anything. I had no knowledge of the intricacies. Simply the E.O. examined me, and cross examined.

10. That the E.O. in his report at Page 8 of "Analysis and Assessment of Evidence" at paragraph (d) gave a finding that "Shri Rup Ram Das had not married Anti. Sadari Das legally or by social customs".

This is sufficient to acquit the charged Officer. At Paragraph (c) the so-called marriage Certificate of Sadari Das to at (4) and (11) were not found to be by the competent authority.

so there was no marriage and no bigamy.

11. That the disciplinary Authority did not apply its mind and passed the order of termination of service.

12. That I have served for more than 21 years and at the fag end of my service I should not have been dismissed from service on such trumped up charges.

It is not understood how the E.O. said the charges to have been proved when his finding and assessment is totally and fully does not establish any element of bigamy. The Charge-sheet itself is not maintainable.

13. That the "Finding of Enquiry" the E.O. concludes as under "that the Charges against Sri Rup Ram Das, Refg. Mech. will stand proved Provided :

- (1) his earlier living with Smti. Sadari Das is unambiguously established as a legal marriage. and
- (2) his Present association with Nivedita Das, too, proves to be an authentic legal marriage".

With such a conditional enquiry report, can a man at the end of service be terminated?

It is therefore prayed that your honour may set aside the order dated 26.6.95 passed by C.W.E. (AF) Jorhat including the Charge-sheet and the proceeding and reinstate me in service with full service benefits, arrears of salary etc, Pending disposal of the appeal I may not be thrown out of the official quarter in my occupation for the ends of justice. And I as in duty bound shall ever pray.

yours humbly,

Sd/-

(Sri Rup Ram Das)

Annexures:

1. Termination Order
2. Enquiry Report.

Attested
R
Advocate
8-1-96

ANNEXURE - 'D'

CONFIDENTIAL

Tele AF : 2238

Head quarters
Chief Engineer (AF)
Shillong zone
Elephant Falls Camp
PO : Nonglyer
Shillong-793 009

81878/18/122/Elcon

Dt. 30 Sep./95.

O R D E R

1. WHEREAS the penalty of "Removal from service" was imposed on MES-238442 Shri Rup Ram Das, Ref Mech of GE (AF) Jorhat on the ground of conduct which led to his conviction on a charge.
2. AND WHEREAS the said MES-238442 Shri Rup Ram Das, Ref Mech has submitted an appeal dt. 26 July 95 against penalty awarded to him before the appellate authority to set-aside the penalty ordered by the competent disciplinary authority.
3. NOW, THEREFORE, the undersigned, the appellate authority after careful examination of the case hereby rejects ~~some extent~~ the said appeal and hold good the penalty awarded by the competent disciplinary authority.

Attested
Advocate
8-1-96

stn : Shillong -9.

Dated : 30 Sep. 95.

MES-238442 Shri
Rup Ram Das, Ref Mech
GE (AF) Jorhat
(Through CWE (AF) Jorhat)

(As Madan)
Brig
Chief Engineer(AF)