

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.386/2013

Order Reserved on: 04.04.2016

Pronounced on:18.05.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Narendra Kumar Tewari,
E-902, MIG Flats,
Pratap Vihar,
Ghaziabad, UP.

-Applicant

(By Advocate Shri G.K. Singhal)

-Versus-

1. The Secretary, Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Directorate General,
Sanshatra Seema Bal,
East Block, R.K. Puram,
New Delhi-110066.
3. The Inspector General,
Sashatra Seema Bal, 11th Floor,
Kendriya Bhawan, Aliganj,
Lucknow, U.P.

-Respondents

(By Advocate Shri D.S. Mahendru)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for by the applicant in the OA read as under:

- “a) call for records and set aside the Order dated 16.03.2012 bearing References No.42/SSB/Pers.III/2011(4)-2/36-37 passed by the Directorate General, SSB upholding the Order dated 15.07.2010 passed by the Office of the Inspector General, SSB bearing Reference No.07/FTRL/NGE/08(6)-II-15708;
- b) quash the Order dated 15.07.2010 passed by the Office of the Inspector General, SSB bearing Reference No.07/FTRL/NGE/08(6)-II-15708; and the applicant be taken into regular/active service.
- c) the inquiry proceedings culminating into inquiry report dated 22.09.2009 being against the principles of natural justice be declared illegal;
- d) applicant be given all subsistence allowance as entitled;
- e) applicant be also given Second Installment of arrears of Sixth Pay Commission.
- f) applicant be given all other benefits appurtenant to his service including promotions;
- g) litigation expenses and costs be reimbursed to the applicant;
- h) compensation for the mental agony, trauma and sufferings be awarded to the applicant;
- i) any other or further order(s) as this Hon’ble Tribunal may deem fit and proper in the interest of justice.”

2. The brief facts of the case are as under.

2.1 The applicant joined the respondent-organization Sashatra Seema Bal (SSB) as an Assistant on 1.7.1972. An information was received by Inspector General, SSB, Lucknow (respondent no.3), who is the Disciplinary Authority (DA) for the applicant, that the applicant has married one Smt. Seema on 5.5.2008 at Arya Samaj Mandir, Mahvir Ganj, (Ali Ganj), Lucknow even though his

spouse Smt. Manju Tiwari was still living. He also received a formal complaint to this effect from his wife Smt. Manju Tiwari. In a fact finding enquiry, the charge was, prima facie, found to be true.

2.2 During the course of the fact finding enquiry, it revealed that the applicant had produced copy of his identify card no.26305 issued by the Security Officer, SSB Frontier Headquarters Lucknow, Electricity Bill dated 10.2.2008 issued by CPWD authorities against meter no.1100986 installed at his house no. Type-II quarters CPWD Kendranchal Colony, Sector-K Aliganj, Lucknow and in his affidavit had declared himself as a bachelor at the time of his second marriage at the Arya Samaj Mandir. The fact finding enquiry officer also collected the copy of the affidavit dated 5.5.2008 of the said Smt. Seema as well as the marriage certificate no.2878 dated 5.5.2008 issued by the Arya Samaj Mandir.

2.3 On the basis of the fact finding enquiry report, the applicant was placed under suspension by the DA on 19.12.2008. The applicant challenged the suspension order before the Lucknow Bench of this Tribunal by filing OA no.456/2008 which was dismissed by the Tribunal vide order dated 21.2.2009.

2.4 Annexure C charge-sheet dated 12.1.2009 was issued to the applicant in which the following article of charge was levied against him:

“That the said Shri N.K. Tiwari, while functioning as Assistant in the Frontier Hqrs SSB Lucknow has married Smt. Seema, D/o late Shri Murlidhar resident of 138/136 at Fatehganj on 05.5.08 at Arya samaj Mandir, Mahavair Ganj (Aliganj) Lucknow while his spouse namely Smt. Manju Tiwari is living. Sh. N.K. Tiwari by the above said act, has failed to maintain absolute integrity and acted in a manner of unbecoming of a Govt. Servant and has resorted to bigamy. Thereby, he has violated the Rules 3 (i) (iii) and 21 (2) of CCS (Conduct) Rules, 1964.”

2.5 The applicant replied to the charge-sheet vide his Annexure F letter dated 20.01.2009. An Enquiry Officer (EO) was appointed. The applicant did not participate in the enquiry despite EO sending him notice by post as well as by publication of the notices in the newspapers. Consequently, the enquiry was held ex parte. The EO submitted his report on 22.09.2009. Acting on the EO's report, DA, i.e., respondent no.3 vide impugned Annexure A order dated 15.7.2010 dismissed the applicant from service on the proven charge of bigamy whilst his first wife Smt. Manju Tiwari is still living. Applicant filed his appeal before the departmental AA challenging the order of the DA, who vide his impugned order dated 16.3.2012 dismissed the appeal. Aggrieved by the impugned orders of DA and AA, the instant OA has been filed.

3. Pursuant to the notice issued the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 4.4.2016. Shri G.K. Singh, learned counsel for the applicant and Shri DS Mahendru, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant besides highlighting the issues raised by the applicant in the OA and the rejoinder submitted that the AA has passed his impugned order dated 16.03.2012 without hearing the applicant and that EO had conducted the disciplinary proceedings against the applicant ex parte and that EO did not conduct any investigation in the matter. It was also submitted that the applicant could not participate in the enquiry due to physical danger to him and his family at Lucknow and that the request of the applicant to transfer the venue of enquiry to some place outside Lucknow was not considered. Even the EO did not examine any witness. The learned counsel further submitted that the wife of the applicant Smt. Manju Tiwari has filed an affidavit before this Hon'ble Tribunal wherein she has clearly stated that the alleged complaint from her (Annexure R-1) that her husband has indulged into bigamy by marrying one Smt.

Seema, is a forged and fabricated document and does not bear her signature and that she has never sent any such complaint or letter alleging bigamy by her husband. Concluding his arguments, the learned counsel urged that a wrong charge of bigamy has been leveled against the applicant and in the light of submissions made by him and more particularly in view of the fact that the applicant's wife herself has filed an affidavit denying the charge of bigamy against the applicant, the prayer made in the OA may be allowed and the impugned orders may be quashed and set aside.

5. Per contra, learned counsel for the respondents stated that the respondents had set up a fact finding enquiry against the applicant after receiving the complaint from applicant's wife, Smt. Manju Tiwari. The fact finding enquiry, prima facie, found that the applicant indeed has married one Smt. Seema at the Arya Samaj Mandir which would get corroborated from the marriage certificate issued by Arya Samaj Mandir, affidavit of Smt. Seema available with the Arya Samaj Mandir as well as copy of his official identity card given to the Arya Samaj Mandir by the applicant at the time of his second marriage. The learned counsel also argued that the applicant in the OA has stated that he does not know who Smt. Manju is. But in his letter

dated 26.08.2009 addressed to ASO (P) IO SSD Lucknow (page 66 of the paper-book) admits that he knows Smt. Seema. The learned counsel stated that although EO had provided ample opportunities to the applicant by sending him notices by post as well as by publication of the notices in the newspapers but he chose not to participate in the enquiry and as such he cannot take plea now before this Tribunal that the enquiry has been held ex parte against him. The learned counsel also drew our attention to a letter dated 7.4.2008 from the applicant addressed to the Chief Security Force, Lucknow wherein he has said that one Shri D.K. Srivastava and his wife Smt. Archana and Ms. Seema daughter of Shri Murlidhar had provided him something in the tea and when he slowly started losing his sense, these persons had taken his thumb impression and signature on some papers and had also taken some documents in his possession. The learned counsel vehemently argued that by writing such letters belatedly, the applicant is indulging into the act of manipulation and falsehood. Concluding his arguments, the learned counsel stated that from the records available with the Arya Samaj Mandir and from the findings of fact finding enquiry and the formal enquiry conducted by the EO under CCS (CCA) Rules, it is proved beyond doubt that the applicant has

indeed indulged into bigamy by marrying Smt. Seema when his first wife Smt. Manju Tiwari is still alive and thus he has been rightly punished by the respondents and hence the OA may be dismissed.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. From the documents received from Arya Samaj Mandir viz. affidavit of Smt. Seema, photocopy of official identity card of the applicant, copy of proof of his residence at Lucknow and the marriage certificate issued by the Arya Samaj Mandir, it is clearly proved that the applicant has indeed married Smt. Seema whilst his wife Smt. Manju Tiwari is alive and thus has indulged into the act of bigamy. This has been amply proved during the course of fact finding enquiry and the formal enquiry conducted by the EO under the provisions of CCS (CCA) Rules, 1965. The submission of an affidavit by the applicant of his wife Smt. Manju Tiwari during the pendency of the instant OA before this Tribunal, his letter dated 4.2.2008 addressed to the Chief State Security Force, Aliganj, Lucknow appear to be an afterthought with the sole intention of extricating himself out of the charge of bigamy for which he has been punished by the respondents. It is settled law that in a departmental enquiry the charged

government servant can be punished on the basis of preponderance of the evidence and that the charges need not be proved beyond doubt. In the instant case, the preponderance of the evidence to prove the charge against the applicant is hugely present viz. the documents submitted by Smt. Seema and the applicant for solemnizing their marriage in the Arya Samaj Mandir and the marriage certificate issued by the Arya Samaj Mandir in confirmation of their marriage. Hence, we are convinced that the applicant has indulged into the act of bigamy and he has been rightly punished by the respondents for such an illegal act.

7. In view of the discussions in the foregoing paras, we do not find any substance in the OA and we dismiss the OA accordingly.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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