Central Administrative Tribunal
Principal Bench

OA No.1018/2012

Order reserved on: 21.07.2016
Order pronounced on: 07.10.2016

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

Ex. Head Const. (A.W.O.) Dinesh Kumar,
No.430/Comm,
S/o Shri Ishwar Singh,
R/o Devi Durga Mandir in South Sewa Kutti
Near Poultry Farm, GTB Nagar,
Kingsway Camp, Delhi.

- Applicant

(By Advocate: Mr. Sachin Chauhan)

Versus

1. Govt. of NCT of Delhi through
Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate,New Delhi.

2. The Joint Commissioner of Police,
Operations,
Through Commissioner of Police,
PHQ, MSO Building,
I.P. Estate,New Delhi.

3. The Addl. Commissioner of Police,
Operations,
Through Commissioner of Police,
PHQ, MSO Building,
I.P. Estate, New Delhi.

4. The Deputy Commissioner of Police,
Communication,
Through
Police Hqr, MSO Building,
I.P. Estate, New Delhi.

- Respondents

(By Advocate: Mrs. P.K.Gupta)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant has filed the present OA seeking the following relief:

> "(i) To set aside the impugned orders from A-1 to A-3 and further direct the respondents to reinstate the applicant in service with all consequential benefits including Seniority and promotion & pay and allowances.
>
> (ii) To further direct the respondents to treat the intervening period of the applicants from the date of dismissal to that of reinstatement i.e. 28.2.98 to 10.10.2007 as spent on duty for all intents and purposes.
>
> (iii) Any other or further relief which this Hon'ble Tribunal may deem fit and proper in the case."

2. The applicant was departmentally proceeded against on the following allegation:

> "It is alleged against HC Dinesh Kumar No.430/Comn that he was married to WHC Tejwanti No. 2115/SW on 9.10.89 at her father's house no. RZ-28/5 Gali No. 13, Indira Park Palam Colony. One son named Varun Choudhary was born to Smt. Tejwanti out of this wedlock on 1.5.90. It is further alleged that he again married to one Ved Kumari on 8.2.96 without sorting divorce from Smt. Tejwanti.
>
> This above act of HC Dinesh Kumar No. 430/Comn amount to a grave misconduct and acted in a manner unbecoming of a police officer which is in violation of rule 3 (ii), (iii) of CCS (Conduct) Rules, 1965 and render him liable for departmental acting under section 21 of Delhi Police Act, 1978."

3. A summary of allegation was served on the applicant and on not pleading guilty, the Disciplinary Authority (DA) ordered a departmental enquiry. During the enquiry, after the examination of PW-1, i.e., the first wife of the applicant, the applicant did not cooperate in the proceedings despite several opportunities given to

him. The proceedings were concluded by the Enquiry Officer (EO) *ex parte*. The DA effectively agreeing with the findings of the EO sent a copy of the enquiry report to the applicant with a direction to submit his representation but he neither submitted his representation on the findings of the IO nor availed of the opportunity of personal hearing given to him subsequently. He even refused to receive the letters/summons issued by the respondents. The DA keeping in view the gravity of his misconduct and previous bad record of service imposed the penalty of dismissal from service on the applicant vide order dated 28.02.1998. His appeal and revision petitions were also rejected by the concerned authorities by order dated 26.07.1999 and 29.01.2001 respectively.

4. The applicant approached this Tribunal in OA No.2100/2005 mainly on the ground that while passing the order of dismissal the DA had considered the previous bad record which was not a part of the charge made against the applicant in the departmental enquiry. This Tribunal vide order dated 04.07.2007 quashed the order of the DA and remanded the matter back to the DA with the direction to consider the matter afresh and if in his discretion and judgment the charge under circumstances was serious enough to entail an order of dismissal, may pass a fresh order. If, however, in his view the order of dismissal was to be passed only in the background of previous bad record of the

applicant, the applicant would be charged accordingly and after following the due procedure, appropriate order shall be passed.

5. The applicant was reinstated by the order dated 10.10.2007 but was deemed to be under suspension as he was under suspension at the time of dismissal vide order dated 27.04.1994 due to his involvement in case FIR No.192/194 u/s 452/506/34 IPC and 25/54/59 Arms Act, P.S. Nangloi, Delhi. The DA passed a fresh order on 31.10.2007 dismissing the applicant by again taking a view that the charge of bigamy was proved against the applicant, which was serious enough to entail the order of dismissal. The appeal against the order dated 31.10.2007 was also dismissed on 02.05.2008. The applicant filed OA No.1743/2008 seeking to quash the order of the Appellate Authority on the ground that it had relied on extraneous material obtained behind the back of the applicant. It was stated that the order of the Appellate Authority (AA) was passed after calling Smt. Tejwati, the alleged first wife of the applicant for corroborating her statement given during the course of disciplinary enquiry. This Tribunal took a view as the statement of Smt. Tejwati had already been recorded in the course of the departmental enquiry, there was no necessity to call her by the AA in person for corroboration of her statement.Accordingly, the AA's order dated 02.05.2008 was quashed and the matter was remitted back to the AA to pass a fresh order. The AA in compliance of the direction of the

Tribunal passed an order on 16.03.2011, which along with the order of the DA dated 31.10.2007 and the report of the EO have been impugned in this OA.

6. The applicant has challenged the impugned orders on several grounds. The salient ones are:

(i) There is no documentary legal proof of the applicant being married to WHC Tejwati.

(ii) The authorities failed to consider the biasness of the complainant Tejwati against the applicant.

(iii) The defence of the applicant at any point of time was neither considered by the IO and not by the departmental enquiry. The applicant wasnot called for personal hearing before passing the order of dismissal despite the fact that he had been reinstated following the direction of this Tribunal. The departmental enquiry was vitiated as the EO had asked leading questions to the applicant after the deposition of WHC Tejwati.

(iv) The departmental enquiry was also vitiated as right of the applicant for cross examining the prosecution witnesses was denied.

(v) No opportunity of being heard is given to the applicant to participate in the DE.

(vi) The EO did not consider DW-3 and DW-4.

(vii) The applicant was not notified with regard to the intervening period from the date of dismissal to date of reinstatement nor any specific order was passed in this regard.

(viii) The intervening period from the date of dismissal to date of reinstatement cannot be treated as not spent on duty as the applicant was wrongfully restrained from discharging duties and the same has been upheld by this Tribunal.

7. During the arguments the learned counsel submitted that at this stage his submissions were limited to the question of quantum of punishment. According to the learned counsel, the misconduct of bigamy has nothing to do with the discharge of official duties, and therefore, even if the charges were proved against the applicant, the authorities should have taken this fact into account. Learned counsel in this regard relied on

(i) **Rohit Kumar Bhujel vs. Union of India and ors.**, WP (C) No.1308/2005 of High Court of Guwahati (Imphal Bench)

(ii) **Pancham Giri vs. State of U.P. and ors.**, 2010 5 AWC 4414 of High Court of Allahabad

(iii) **Constable Narender Singh vs. Govt. of NCTD**, OA No.715/2012 of Principal Bench of this Tribunal.

8. Learned counsel for the respondents submitted that during the departmental enquiry the fact that the applicant was married to WHC Tejwati had been proved beyond doubt. The EO, the DA and AA have taken into account not only the statement of WHC

Tejwati but also the statements of other witnesses who were examined during the enquiry. The applicant during most part of the DE absented himself and did not even respond to the communication conveying him the report of the EO and directing him to submit his representation. He also did not participate in the personal hearing by the DA. The applicant, therefore, at this stage cannot complain of any opportunity to defend himself having been denied to him during the departmental enquiry. He himself should have cooperated in the enquiry and cleared his name if he had evidence in support of his stand. He chose not to participate in the enquiry and only later on he has been challenging the orders of the DA and AA on technical grounds. Learned counsel further submitted that bigamy was a serious misconduct in the CCS (Conduct) Rules, violation of which was sufficient ground to award the punishment of dismissal. There was no merit in the prayer of the applicant for reviewing the punishment imposed on the applicant on the ground of proportionality. According to learned counsel the judgment cited by the applicant would not support his case because the facts and circumstances in those judgments are quite different from that of the present OA.

9. We have heard the learned counsel for the parties and perused the record. Learned counsel for the applicant during the arguments has restricted his submissions to the point of

proportionality of punishment imposed on the applicant. According to the learned counsel though the applicant has got serious misgivings about the way the departmental enquiry was conducted and the orders have been passed by the DA and AA, the point to be considered is whether the misconduct of bigamy was a sufficient ground for the extreme penalty of dismissal.

10. From the facts of the case it can be seen that initially the applicant participated in the DE and did get opportunity to cross examine the PW-1. The question of opportunity to cross examine further witnesses did not arise since he stopped attending the proceedings. His marriage with both WHC Tejwati and Ms. Ved Kumari were proved with the help of documentary evidence. However, if he had anything to say on the findings of the EO, he could have submitted representation on the EO's report but again he did not do so and also did not attend the personal hearing afforded by the DA. In the OA also there is no explanation as to why he stopped participating in the DE. Relevant Paras 4.1 to 4.6 of the OA are reproduced below:

> "4.1 That the applicant was appointed in the Delhi Police 01.09.1987 and has always rendered his duties quite efficiently and diligently.
>
> 4.2 That the applicant was dealt departmentally on the applicant of marrying another woman during the lifetime of first wife. The inquiry was conducted and merely on suspicion and surmises the charge against the applicant was proved.
>
> 4.3 That the applicant made a defence statement in the inquiry and the contents of the same may be read as part and parcel of the present OA but not repeated for the sake of brevity.

4.4 That the Inquiry Officer held the charge proved against the applicant without dealing with the evidence on record and violating the laid down departmental rules for conducting the departmental inquiry.

4.5 That the applicant made a reply to the findings of the Inquiry Officer and the contents of the same may read as part and parcel of the OA but is not repeated for the sake of brevity.

4.6 That the disciplinary authority imposed the punishment of dismissal from service after vehemently taking into account the previous bad record of the applicant dated 28.2.1998."

11. The applicant has referred to his 'defence statement' and his 'reply to the findings' of the EO 'to be read as part and parcel' of the OA without annexing a copy of the same. According to the counter reply of the respondents he never submitted any defence statement and 'reply' as claimed above. It is obvious that the applicant has no explanation for his aforesaid conduct and has only tried to set the court on a wildgoose chase. He is only trying take advantage of the technicalities in which he succeeded twice in the past. In OA No.2100/2005 and OA No.1743/2008 this Tribunal quashed the impugned orders on various technical grounds. The applicant is now not challenging the finding of bigamy but is praying for a penalty which is less harsh than the penalty of dismissal.

12. From the facts of the case and the records placed before us, we do not find any reason to doubt the finding of the EO that the applicant was guilty of bigamy. The DA and AA have rightly taken cognizance of the same and imposed the penalty punishing him for the aforesaid misconduct. With regard to the question

proportionality of the penalty of dismissal to the misconduct of bigamy, the applicant relied on a few judgments.

13. In **Rohit Kumar Bhujel** (supra) the Hon'ble High Court of Guwahati had taken a view that the punishment of dismissal for contracting second marriage "in the facts and circumstances of the case" was an excessive punishment, and therefore, set aside that order. However, the facts of that case are quite different from the present OA. While considering the question of bigamy the Hon'ble High Court had also noted that there was serious infringement of the principles of natural justice inasmuch as the petitioner had been denied the statutory right of defence. The petitioner did not get the assistance of another Government servant to defend his case during the departmental proceedings. The Hon'ble High court took a view that "a reasonable opportunity of being heard" as envisioned in Article 311 of the Constitution of India was denied to the applicant and the DA did not actually deal with the subject in terms of the requirement of law. Therefore, it was not the bigamy alone that was the reason why the Hon'ble High Court quashed the impugned order.

14. In **Pancham Giri** (supra) the Hon'ble High Court of Allahabad considered various judgments of Hon'ble Supreme Court and High Courts, including Hon'ble High Court of Gawahati in Rohit Kumar Bhujel, while granting relief to the petitioner. The

High Court took note of various other mitigating factors - that there was no indication of any previous misconduct that may add to the detriment of the petitioner; that the petitioner entered into the second marriage for the sole purpose of having a son, whose birth would guarantee his salvation and emancipation from this world as per accepted Hindu religious belief; that the second marriage was contracted with the consent of the first wife who did not lodge any complaint; the first wife had supported his cause and carried on with the petitioner for the past 28 years without demur or complaint; the petitioner was to retire within one year or slightly more from his service. The High Court took a view that considering the huge size of the family of the petitioner and his old age and two wives, the punishment of dismissal could be considered as disproportionate. It can be seen that the Hon'ble High Court was guided by the peculiar facts and circumstances of that case while invoking the principle of proportionality.

15. In the case of **Constable Narender Singh** (supra) this Tribunal after considering the judgment of Hon'ble High Court of Guwahati in **Amal Kumar Baruah vs. State of Assam and others**, WP (C) No.5353/2002 and **Pancham Giri** (supra) had remanded the matter to the AA to take a fresh view on the question of proportionality of punishment imposed on the applicant. The Tribunal did not state that the penalty of dismissal was disproportionate in the case of bigamy. It may be

noted that in the case of **Amal Kumar Baruah** (supra) the first wife of the petitioner had in the course of enquiry virtually withdrawn her complaint saying that petitioner is looking after her and children and that the second wife had become part of their family. In the case was **Pancham Giri** there were a set of mitigating reasons,as discussed earlier, considered by the High Court.

16. From the perusal of the above judgments, it can be seen that the facts of those cases are not similar to the facts of the present OA and that no universal law has been laid down that the punishment of dismissal is disproportionate to the misconduct of bigamy. In **Veerpal Singh v. Senior Superintendent of Police and Ors**, 2006 (5) ALJ 307 the High Court of Allahabad had the following to say about the misconduct of bigamy:

> "Lastly the petitioner contended that the punishment is harsh and not commensurating to the offence and therefore, is liable to be set aside. Once the misconduct of the petitioner has been found proved, the scope of interference in the matter of punishment is extremely limited. It is only when the punishment imposed is so disproportionate to the act or omission constituting misconduct that it shocks the conscience of the court or a person of ordinary prudence, only then the court may interfere and not otherwise. In any country where bigamy is an offence, a government servant guilty of committing an offence cannot ask to continue in service after award of minor or lesser punishment. Therefore, I do not find any reason to hold that the punishment imposed in the present case is arbitrary or so disproportionate to the act of misconduct so as to warrant interference by the Court in exercise of powers under Article 226 of the constitution."

17. In the present case, the undisputed facts are that the applicant decided not to participate in the departmental enquiry after the deposition of PW-1. He did not submit his representation on the report of the EO; he did not appear in the personal hearing to be given by the DA. He raised the defence that he never married second time only at the appellate stage and not during the departmental enquiry. Apart from this the applicant was only about 30 years of age when he was dismissed from service. Therefore, it cannot be said that the penalty was imposed towards the fag end of his career. We, therefore, do not find any mitigating factor to consider any interference in the orders passed by the DA and AA.

18. It is not the case of the applicant that bigamy is not a misconduct under Rule 21 (2) of the Conduct Rules that provides that "No Government having a spouse living, shall enter into, or contract, a marriage with any person."Once the misconduct is proved it is the prerogative of the DA to take a view with regard to quantum of punishment. In view of the law laid down by the Hon'ble Supreme Court in **B.C. Chaturvedi vs. Union of India**, (1995) 6 SCC 749 laying down the scope judicial review in disciplinary proceedingswe do not find any justification for interfering in the penalty imposed on the applicant by DA and confirmed by AA.

19. Taking into account the entire conspectus of the case, we find the OA devoid of merit.The OA is dismissed as such.

(V.N. Gaur)
Member (A)

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

'sd'

October 07, 2016