

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.202 of 2018

Orders reserved on : 20.09.2018

Orders pronounced on : 25.09.2018

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Birendra Singh Kunwar (aged about 65 years)
S/o late Sh. Chandra Singh Kunwar
R/o C-2, Rasik Dham Apartments,
Maharana Pratap Enclave, Swarn Jayanti Nagar,
Aligarh-202001 (U.P.)

Superannuated from :
Cabinet Secretariat, Government of India,
B-1-B2, 10th Floor,
Pt. Deendayal Antodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110003.

....Applicant

(Applicant in person)

VERSUS

Union of India through

- 1) Secretary (R)
Cabinet Secretariat, Government of India,
B-1-B2, 10th Floor,
Pt. Deendayal Antodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110003.
2. Additional Secretary (SR)
Cabinet Secretariat, Government of India,
B-1-B2, 10th Floor,
Pt. Deendayal Antodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110003.

.....Respondents

(By Advocate : Shri R.K. Jain)

ORDER

Ms. Nita Chowdhury, Member (A):

By filing this OA, the applicant seeks the following reliefs:-

“8.1 To quash and set aside the penalty order No.6(4)/1/2010-[DO.II9A)]-EA.III-90 dated 16.01.2017 (Annexure A-1) with all consequential benefits.

8.2 To pass any other order/orders which deem fit and proper in the interest of justice.”

2. The grievance of the applicant is that vide impugned order dated 16.1.2017 (Annexure A-1), the Disciplinary Authority has imposed a penalty of withholding of 50% of his monthly pension and 50% of his gratuity permanently.

3. The said punishment is imposed upon the applicant pursuant to disciplinary inquiry initiated against him vide Memorandum dated 14.12.2011 vide which following articles of charges were levelled against the applicant:-

“ARTICLE OF CHARGE-I

That the said Shri B.S. Kunwar, SFO (DG) {now US(DG)}, ID No. 10928-T was inducted into Special Circuit in February 2008 for assignment abroad. After induction in Special Circuit i.e. MEA, he has submitted a representation for inclusion in his service records the name of Ms. Manihal Devi who was living with him for the last 24 years. He has further mentioned that he was having a living-in relationship with this lady and two children born out of his cohabitation with Ms. Manihal Devi. As per official records, Shri Kunwar was married with Ms. Suman according to the Hindu Rites and customs. The marriage of Shri Kunwar to Ms. Suman still subsists as it has not been annulled by any divorce/dissolution of marriage as per Hindu Marriage

Act, Government servant are, however, restricted regarding marriage – (i) no Govt. servant shall enter into or contract, a marriage with a person having a spouse living and (ii) no Govt. servant having a spouse living, shall enter into, or contract, a marriage with any person. The commission of act by Shri Kunwar is against Rule 21 (2) of CCS (Conduct) Rules, 1964. Further, such a marriage is null & void under the Hindu Marriage Act 1955.

By his aforesaid acts of omission and commission i.e. the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} has exhibited lack of absolute integrity and has acted in a manner which is highly unbecoming of a Government servant and has thereby, violated Rule 3 (1)(i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-II

That the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} while posted at Hqrs., Cabinet Secretariat, New Delhi submitted his particulars as a Group 'A' officer on 07.05.2008. In the said proforma, he mentioned the name of Ms. Manihal Devi as his wife. Whereas, as per the records, his wife's name is Ms. Suman. The marriage of Shri Kunwar with Ms. Suman still subsists as there was no legal divorce nor dissolution of marriage between them.

By his aforesaid acts of omission and commission i.e. the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} has committed serious misconduct by exhibiting total lack of absolute integrity and has conducted himself in a manner which is highly unbecoming of a Government servant. He has, thereby violated Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-III

That the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} was inducted to Special assignment for posting abroad during February 2008. That the said Kunwar misrepresented the fact with the intention of cheat and mislead the Department and applied for passports by mentioning his live-in companion Ms. Manihal Devi as his wife and two children born out of his cohabiting with Ms. Manihal Devi as his dependent family members. Shri Kunwar managed to obtain diplomatic passports fraudulently in respect of the said woman and her two children with the malafied intention of taking them with him abroad in place of his legally wedded wife and legal children.

By his aforesaid acts of omission and commission, the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} has committed serious misconduct by exhibiting lack of absolute integrity and has conducted himself in a manner which is highly unbecoming of a Government servant. He has, thereby violated Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.”

4. The said Memorandum dated 14.12.2011, along with list of documents and list of witnesses by whom the aforesaid charges were proposed to be sustained, was sent to the applicant. To which the applicant submitted his reply dated 13.1.2012 denying the said charges. Accordingly, inquiry officer and presenting officers were appointed vide orders dated 13.4.2012. After completion of inquiry, inquiry officer submitted his report dated 3.10.2012 in which he concluded that Article of Charges-I & II do not stand established and Article of Charge-III stands only partially established. However, Disciplinary Authority disagreed with the conclusions of the inquiry officer with respect to the Article of Charge-III and a copy of the inquiry report with disagreement note dated 2.1.2015 was served upon the applicant thereby giving him an opportunity to make his submissions on the inquiry report. The applicant submitted his representation dated 18.1.2015 against the said disagreement note and inquiry report. The Disciplinary Authority rejected the said representation of the applicant and tentatively proved the imposition of penalty of withholding of 50% amount of gratuity and pension on permanent basis. Thereafter in pursuance of Rule 15(3) of CCS (CCA) Rules, 1965, the advice of the Union Public Service Commission (UPSC) was sought on the quantum of penalty vide letter dated 27.7.2015. The

UPSC after going through the findings of the inquiry officer, Disciplinary Authority's disagreement note on the findings of the inquiry officer and the applicant reply to the findings and disagreement note, observed on two article of charges and finally advised that the charges established against the applicant constitute grave misconduct on his part and ends of justice would be met if a penalty of "withholding of fifty percent (50%) of his monthly pension otherwise admissible to him is imposed on the C.O., Sh. B.S. Kunwar on a permanent basis and further fifty percent (50%) of the gratuity admissible to him should also be withheld on a permanent basis." The said advice of the UPSC was sent to the applicant vide OM dated 17.12.2015 to enable him to submit his written representation or submission to the Disciplinary Authority within 15 days of receipt of the said communication. The applicant submitted his representation dated 10.1.2016 against the said UPSC advice. The Disciplinary Authority after considering the submissions made by the applicant in the said representation rejected the same vide order dated 18.1.2015 and vide impugned order dated 16.1.2017 imposed the said punishment upon the applicant.

5. Contentions of the applicant, who is appearing in person, is that employer – employee relationship had snapped by reason of applicant's superannuation on 31.7.2012, as the employee had neither authority nor jurisdiction to discipline a retired employee. The respondents have refuted this contention and stated that in terms of sub rule 2(a) under Rule 9 of CCS (Pension) Rules, 1972, the departmental

proceedings, if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this Rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

6. Further contention of the applicant is that Rule 9 (2) (a) of the Rules *ibid* does not authorize disciplinary proceedings, as it authorizes only deemed to be proceedings for adjusting/recovering pecuniary loss caused to the Government on account of proven grave misconduct or negligence during his service period, as stipulated in Rule 9(1) of the aforesaid Rules. The respondents have also refuted this contention and stated that Sub rule (1) of Rule 9 clearly stipulates that if a pensioner is found guilty of grave misconduct or negligence during the period of service, the President can withhold pension or gratuity or both, either in full or part.

7. Another contention of the applicant is that there is neither any charge nor any finding against the applicant of causing any pecuniary loss to the Government, therefore, impugned order to withhold 50% of his monthly pension and 50% of his gratuity is without authority of law. To this contention, the respondents have categorically stated that nowhere it is stated in Rule 9 of the Rules *ibid* that pension and gratuity could be withheld only on grounds of pecuniary loss to the Government. In this case, pension and gratuity of

the applicant were reduced by 50% permanently owing to the grave misconduct on his part.

8. Further contention of the applicant is that Rule 9 of the Rules covers only those grave misconducts which have caused pecuniary loss to the Government, e.g. corruption, misappropriation of funds and cases of other financial irregularities and the purpose of withholding pension or gratuity is also for adjusting the pecuniary loss caused to the Government on account of grave misconduct or negligence on part of the pensioner during his service period. To this contention, respondents stand is that Rule 9 of the Rules provides that President reserves the rights of withholding a pension or gratuity or both either full or in part, even if the pensioner is found guilty of grave misconduct and it is not necessary that the same can be withheld only when there is pecuniary loss to the Government.

9. Another contention raised by the applicant is that for invoking Rule 9(1) of the Rules *ibid* is that the pensioner must be found guilty of grave misconduct, as distinct from misconduct. As no finding of grave misconduct has been recorded either in inquiry officer's report or in Disciplinary Authority's disagreement note and therefore imposition of aforesaid punishment vide impugned order is without jurisdiction. To this contention, respondents stand is that the disciplinary authority categorically held vide impugned order that the proved charges constitute grave misconduct.

10. Further contention of the applicant is that the Hon'ble Supreme Court in several cases held that if a man and

woman live together and cohabit for a number of years, law will raise the presumption that they lived as husband and wife and their children will be legitimate. Therefore, disagreement of the Disciplinary Authority with the finding of the inquiry officer on article of charge-II that “such act on part of the charged officer is not backed by law” is unreasonable. To this contention, respondents stand is that there is no precedent of law recognizing the relationship between a Hindu man, already being legally married to a Hindu woman, and a Hindu woman, who have lived together for a considerable period.

11. Applicant further alleged that this is the second departmental enquiry on the same family issue and as such it amounts to double jeopardy. To this contention, respondents stand is that one article of charge-I is similar in second departmental inquiry but this charge was not proved and as such the question of double jeopardy does not arise.

12. This Court heard the applicant, who appeared in person, as also learned counsel for the respondents and also carefully perused the material placed on record.

13. It is well settled that in the matter of imposition of sentence, the scope of interference of the Tribunal is very limited and restricted to exceptional cases and it cannot be exercised without sufficient reasons. However, the Tribunal has jurisdiction to interfere with the quantum of punishment in appropriate cases, where orders of punishment are passed disproportionate to the charges levelled against the individual. The punishment imposed by the disciplinary

authority or the appellate authority unless shocking to the conscience of the Court, cannot be subjected to judicial review. Also, the Tribunal cannot interfere with the discretion exercised by the disciplinary authority or the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on a host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds previous penalty, if any, and the discipline required to be maintained in the department or establishment he works.

14. It is also well settled that there is no bar in continuance of the disciplinary proceedings even after the retirement of the Government servant for imposing the punishment as contemplated under Rule 9 of CCS (Pension) Rules, 1972, as held by the Hon'ble Apex Court in the case of **Secretary, Forest Department vs. Abdur Rasul Chowdhury**, AIR 2009 SC 2925).

15. Having regard to the aforesaid legal positions, now this Court will examine the issue involved in this case. As it is an admitted position that the applicant, while filling a proforma to be submitted at his headquarter had mentioned the name of Ms. Manihal Devi as his wife whereas as per the records, his wife's name is Ms. Suman and the marriage of the applicant with Ms. Suman still subsists as there was no legal

divorce nor dissolution of marriage between them and further the applicant applied for passports by mentioning his live-in companion Ms. Manihal Devi as his wife and two children born out of his cohabiting with Ms. Manihal Devi as his dependent family members and the applicant managed to obtain diplomatic passports fraudulently in respect of the said woman and her two children with the malafide intention of taking them with him abroad in place of his legally wedded wife and legal children, although the applicant tried to justify his act by referring to the Hon'ble Supreme Court judgments on the issue of live-in relation as well as certain communications made with the departments, as stated in the OA. But the aforesaid admitted facts cannot said to be justified on the said grounds until and unless the same is supported by law or rules on the subject and the law of the land with regard to Government servant is that Government servant cannot do any bigamous act, as the same is a grave/gross misconduct. The applicant himself admitted that his marriage with his legally wedded wife still subsist as there is no divorce/dissolution of same till date. Hence, as he is bound by Government rules, he was correctly proceeded against and we are also in full agreement with the contentions raised by the respondents in their counter affidavit. We have also carefully perused the impugned order dated 16.1.2017 (Annexure A-1) and found that there is no illegality in the said Order. Rather the same is a very detailed order in which each and every aspect of the issues involved in this case have been clearly spelt out.

16. In the result, and for the foregoing reasons, we do not find any illegality in the impugned order and accordingly, the present OA is dismissed, being devoid of merit. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/