

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00838/2016

Tuesday, this the 13th day of March, 2018

CORAM

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

HON'BLE MR. E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

P. Devadas, aged 58 years,

S/o Krishnan,

Assistant Superintendent

(under order of dismissal)

Passport office, Malappuram.

Residing at EF 4, 5931,

Bilathikulam Housing Colony (KSHB Colony),

Eramipalam P.O., Calicut-673 006.

Applicant

(By Advocate: Mr.M.R.Hariraj)

Versus

1. Union of India, represented by
Secretary to Government of India,
Ministry of External Affairs,
Tilak Marg, New Delhi-110 001.
2. Chief Passport Officer and Joint Secretary (PSP),
Ministry of External Affairs, (CPV Division),
Tilak Marg, New Delhi-110 001.
3. Passport Officer,
Passport Office, Inter City Arcade,
Down Hill P.O., Malappuram-676 519.
4. Additional Secretary (CPV and OIA),
Ministry of External Affairs,
(CPV Division), Tilak Marg,
New Delhi-110 001.

Respondents

(By Advocate: Mr.N.Anilkumar, Sr.PCGC)

This OA having been heard on 6th March, 2018, the Tribunal delivered the following order on 13th March, 2018:

ORDER**By E.K.Bharat Bhushan, Administrative Member**

This OA is filed by P. Devadas, Assistant Superintendent (under order of dismissal), Passport Office, Malappuram challenging orders marked as Annexures A5, A23 & A25. He is aggrieved by his dismissal from service by the 2nd respondent. The reliefs sought in the OA are as follows:

(i) To quash Annexures A5, A23 and A25.

(ii) To direct the respondents to reinstate him in service forthwith with all consequential benefits including back wages with interest @ 12% per annum.

2. The facts of the case in brief are as below:

The applicant entered service of respondent No.3 as a Casual Clerk at Calicut Passport Office and while working there, on 9.11.1984, had entered into an agreement of marriage with one Smt. Pankajakumari who was also a Casual Clerk in the same office. The applicant as well as Smt.Pankajakumari had executed an agreement to marry which was registered in the Sub Registry, Calicut and a copy of the document is available at Annexure A1. No formal civil marriage was conducted although the applicant and Smt. Paankajakumari lived together for the next several years and two children were born to them. Both of them were regularized as employees under the respondent No.2 and also indicated each others' names as spouses in their service records.

3. Due to marital discord, it is stated in the OA, Smt.Pankajakumari left the applicant demanding divorce. As there was no legal marriage, it became difficult for both spouses to obtain a court divorce. Smt. Pankajakumari requested for deletion of the name of the applicant as husband from her service record which was agreed to by the authorities. On 26.5.2001, the

applicant *suo motu* executed a divorce deed cancelling the agreement at Annexure A1. This document No.186/2001 is at Annexure A2. On 3.8.2002, the applicant married another colleague, Smt. Smitha under the provisions of the Special Marriage Act . This marriage was committed under proper notice and no opposition was raised from any quarter. The name of the erstwhile husband of Smt. Smitha was replaced by that of the applicant as evidenced at Annexure A3(a) and A3(b).

4. Again due to marital differences, Smt. Smitha started living separately from May, 2008 onwards. The applicant had approached the Hon'ble Family Court alleging cruelty and desertion on the part of his spouse and was granted a divorce as per judgment dated 17.1.2013 in O.P. No. 654/2012 of the Family Court, Malappuram, subsequently confirmed by the Hon'ble High Court. At this point in time, a Memorandum of Charges was issued by the first respondent under Rule 14 of CCS (CCA) Rules holding that the applicant had deserted his first wife and had entered into a second marriage without divorcing his earlier wife. A copy of the Charge Memo dated 2.7.2009 is at Annexure A5. The applicant suggests that the timing of the issuance of the Charge Memo was calculated to exclude the applicant from promotion which was due to him, although he happened to get promoted as Assistant w.e.f. 4.11.2008. He denied the charges through a written statement contending that there had been no valid marriage between him and Smt. Pankajakumari and their separation was on mutual agreement. He further submitted that the marriage with Smt. Smitha under the Special Marriage Act was the only marriage he had formally been part of.

5. In any case, Smt. Smitha who was a co-accused in the proceedings was exonerated of all charges and given promotion due to her. In the applicant's case, there was no further movement until 2012, when on the eve of his next promotion, further proceedings were resurrected through appointment of a Presenting Officer and an Inquiry Officer. These functionaries were appointed as per order dated 20.4.2011 (Annexure A7).

6. The applicant submits that from this point onwards, he was made to suffer grievous victimization. His prayer to conduct the inquiry in Kerala was not agreed to. So also his request for various documents. He was even denied services of a legal practitioner that he had sought to assist him in the proceedings. Various documents which would reveal the tribulations he had to go through at the hands of the Inquiry Officer could be seen in Annexures A7 to A14.

7. In the inquiry, Smt. Pankajakumari had admitted that there was no marriage function conducted. She also admitted to have left the house as she had no wish to continue cohabitation. During cross examination, she conceded that she was not willing to live with the applicant which would show that it was she who actually deserted him. Copy of deposition of Smt. Pankajakumari is at Annexure A15. Copy of deposition of Smt. Smitha is at Annexure A16.

8. The Inquiry Officer, however, held the charges as proved by report dated 21.3.2016 (Annexure A21). Despite filing a representation against the inquiry report (Annexure A22), the applicant came to be dismissed from service as per order dated 5.8.2016 (Annexure A23).

9. The applicant submits that there had been no valid marriage by virtue of Annexure A1 agreement. This fact being so, the charges put up against him of deserting his first wife and engaging in a second marriage while the first marriage was in existence, lose all relevance. At the second marriage none had objected to the same, including Smt. Pankajakumari who is alleged to have been his legal wife. It is also pertinent that Smt. Pankajakumari herself has confirmed that there was no valid marriage while seeking deletion of the name of the applicant from her service book. As there was no marriage with Smt. Pankajakumari that the applicant had entered into, there was no question of his having not sought a divorce. The inquiry itself was vitiated by the fact that he was denied natural justice. The Disciplinary Authority had ruled in favour of dismissal on the basis of extraneous factors. There was only one marriage that the applicant has formally been part of, i.e., with Smt. Smitha, which was subsequently dissolved legally.

10. Per contra, the respondents have filed a reply statement stating that the agreement that the applicant and Smt. Pankajakumari entered into on 9.11.1984 served the purpose of a legal marriage so far as they were concerned. The agreement had stipulated that without their consent and knowledge, they should not divorce each other or remarry. They were also blessed with two children and the agreement was registered before the Sub Registrar. It is also a pertinent fact that the registered agreement of the first marriage between the applicant and Smt. Pankajakumari was unilaterally cancelled by the applicant on 26.5.2001 i.e., *after* he entered into marriage with Smt. Smitha on 6.2.2001. Clearly the applicant was indulging in bigamous activity.

11. The contention in the OA made by the applicant regarding the inquiry being vitiated due to various deficiencies is untenable. All procedures required for proceedings under Rule 14 of CCS (CCA) Rules, 1965 were strictly observed and the applicant was afforded every opportunity including facility for cross examining his erstwhile spouses. It was only then that the Inquiry Officer came to the conclusion about his culpability in the matter and the Disciplinary Authority after due application of mind had imposed the major penalty of removal from service. Hence no violation of Articles 14 & 16 of the Constitution can be alleged on the part of the official respondents. The delay in commencing the proceedings was on account of various procedural requirements and this cannot be used as an excuse by the applicant to claim innocence. It is also not true that Smt. Smitha, against whom also minor penalty proceedings were initiated, was allowed to go scot-free. It was only a considered decision on the basis of facts and explanation on the subject that she was exonerated.

12. The conduct of the applicant has been far from desirable. Even the children he had fathered with Smt.Pankajakumari were left with the divorced mother. The attempt of the applicant to paint himself as a victim of circumstances is also not a valid one. He had engaged in activities not in keeping with his position as a government employee.

13. Sri Hariraj, learned counsel for the applicant and Sri N.Anilkumar, Sr.PCGC for the respondents, were heard.

14. Sri Hariraj contended that the agreement at Annexure A1 was not a valid proof of marriage. He called to his assistance the judgment of the Kerala High Court in *Syed Abdul Basith vs. Assistant Commissioner of Police* [2009 SCC

Online Ker 1291], which deprecated the tendency to consider such agreements as valid proof of marriage. The relevant paragraph is quoted below:

As far as the registration of an agreement is concerned, the registering authority, namely, the Sub Registrar, cannot go into the legality or otherwise of an agreement in view of Rr:67 and 191 of the Registration Rules (Kerala), though it has been held by this court on several occasions that such an agreement does not constitute a valid marriage. (See the Bench decision in Kali v. Kamalakshi Amma, 1967 KLT 1063). The rule making authority should introduce appropriate amendments to the rules under the Registration Rules or issue appropriate instruction for safeguarding the plight of unfortunate girls who are misled and who are unaware of the gravity of the consequences of the agreement. There is no point or purpose in registering a document which has no value in the eye of law. It will not be altogether out of context to note that in the instant case the poor girl did not even know Malayalam and she is a party to the so called marriage agreement in Malayalam, but this Court saw to it that they are duly married."

Further, in Mt. Kalan vs. Emperor, AIR 1938 Sind 127 the expression "marries" used in S.494 of the Indian Penal Code came up for consideration.

Davis, J.C., speaking on behalf of the bench, said:

"We think it is necessary for "the prosecution to prove that the form of marriage was a form recognized by or known to the law, otherwise it would be open to the prosecution by mere assertion to constitute any mutual act on the part of the man and woman a form of marriage. For instance, taking an absurd example and the error in a proposition is often most easily and clearly shown by an absurd example, if the complainant chose to come forward and say that the man and woman held hands while the man cowed like a cock, and the woman clucked like a hen, that was a "form of marriage.", would the learned Judge have accepted that assertion as sufficient?"

15. Sri Hariraj contends that once the "marriage " that the applicant and Smt.Pankajakumari entered into by registering document at Annexure A1 is ruled as invalid, the entire edifice of the case against the applicant collapses. It is not denied that the applicant had lived with the lady in question for several years and had also fathered two children by her. In the absence of a valid marriage, this can be described only as an arrangement by mutual consent and

the applicant cannot be accused of "*desertion*" and "*remarriage*" as the marriage with Smt. Smitha was the only legal marriage he had entered into. The learned counsel further submitted that the entire case had been made up by the authorities to deny him promotion.

16. Sri Anil Kumar argued that the applicant and Smt.Pankajakumari were husband and wife and the fact was recorded even in the service book by mutual consent. He lived with Smt.Pankajakumari as husband and wife until he left her for another colleague. Apart from the lack of morality inherent in his conduct, he is directly guilty of misconduct under Rule 21 of the CCS (Conduct) Rules.

17. We have examined the documents on offer as well as the pleadings made by the two learned counsel. While admitting to the legal ambiguity inherent in the agreement the applicant had entered into with Smt.Pankajakumari at Annexure A1, it is to be seen that it was under its ambit that they had been living as husband and wife for several years. The applicant pleads that he was fully aware that it was not a legal marriage but the fact that he applied for annulling the arrangement shows that he knew he had obligations under the same. His misconduct is further compounded by the fact that he entered into the marriage with Smt. Smitha and afterward only chose to cancel the earlier "*arrangement*". Clearly, his behaviour was less than desirable and more in keeping with that of a cad than a responsible government employee.

18. Under Rule 21 of CCS (Conduct) Rules governing restrictions regarding marriage, the following provision is shown as part of G.I, M.H.A., O.M. No.25/35/60-Ests.(A), dated the 9th December, 1960:

“A question has been raised whether the rules prohibiting bigamous marriage are at all attracted by a case in which a male candidate for Government service contracts a second marriage but the woman with whom the second marriage is contracted does not, under the law, acquire the status of a wife or when a female candidate, contracts a marriage with a person which is void by reason of his already having a wife living. It is hereby clarified that even a marriage which is legally null and void by reason of there being a spouse living at the time of the marriage, would disqualify the person concerned for appointment to Government service.”

19. We are aware that the cited orders have expressed certain reservations on the admissibility of marriage agreements such as the one we are concerned with here. However, we have to take into consideration the distinction between *de facto* and *de jure* in the set of circumstances before us. The facts which came out during the inquiry clearly show that the applicant had accepted Smt. Pankajakumari as his wife, living with her for several years and also fathering two children. It is calumnious on his part, then to turn around and enter into another marriage claiming that his marriage with Smt. Pankajakumari was not valid.

20. With due respect to the facts involved in the case and after appreciating the records and submission made before us, we are of the view that the applicant was clearly guilty of misconduct. His behaviour had brought his office and indeed the government into disrepute in the public eye. Under the circumstances, we conclude that this is not a fit case for us to interfere with. The OA is dismissed as devoid of merit. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

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21. While concurring with the finding of my learned brother Hon'ble Administrative Member that applicant's case was clearly a misconduct, I wish to add that the applicant was trying to escape the rigor of law by carefully venturing to get into a 'contract' with the women he has married so that the criminal law of the land will not visit him with the penal consequences.

22. It has to be borne in mind that the Department in which the applicant is working is extension of the sovereign functions of the Government of India. In such a circumstance every employee of the Government of India is expected to behave as if he is part of the system which governs the Country and, therefore, his conduct shall be beyond denouncement, like the 'Caesar's wife'. Even though the applicant may not be found fault with for the offence of bigamy in terms of the strict cannons of criminal law, his conduct certainly brings ridicule in the eyes of the public and would lower the reputation of the Department/office in the eyes of discerning citizens.

23. To say the least, the conduct of the applicant was certainly unbecoming of a public servant. Therefore, I am also inclined to dismiss this OA. I do so.

(U.Sarathchandran)
Judicial Member

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Annexures filed by the applicant:

- Annexure A5: Copy of charge memo No.V/Vig II/842/58/08 dated 2.7.2009.
Annexure A23: Copy of order No.V/Vig II/842/58/2008, dated 5.8.2016.
Annexure A1: Copy of agreement dated 9.11.1984.
Annexure A2: Copy of document No.186/2001.
Annexure A3A: Copy of request dated 17.1.2007.
Annexure A3B: Copy of order No.V.IV/578/204/79 dated 27.2.2007.
Annexure A4: Copy of the judgment dated 17.1.2013 in OP 654/2012 of the Family Court, Malappuram.
Annexure A6: Copy of the written statement dated 20.7.2009.
Annexure A7: Copy of order No.V/Vig-II/842/58/08 dated 20.4.2011 (20.4.2012).
Annexure A7A: Copy of notice No.NSPA/FDMEA/INQ/1/2012 dated 21.5.2012.
Annexure A8: Copy of representation dated 14.6.2012.
Annexure A9: Copy of representation dated 3.12.2012.
Annexure A10: Copy of representation dated 20.1.2015.
Annexure A11: Copy of proceedings on 20.1.2015.
Annexure A12: Copy of representation dated 6.2.2015.
Annexure A13: Copy of representation dated 6.2.2015.
Annexure A14: Copy of letter No.V/Vig II/842/58/08 dated March, 2015, received on 18.3.2015.
Annexure A15: Copy of the deposition of Smt.Pankajakumari.
Annexure A16: Copy of the deposition of Smt.Smitha.
Annexure A17: Copy of the deposition of Mr.Muraleedharan K.
Annexure A18: Copy of the deposition of the applicant.
Annexure A19: Copy of written brief dated 8.2.2016 of the presenting officer.
Annexure A20: Copy of the notes on arguments dated 2.3.2016.
Annexure A21: Copy of report dated 21.3.2016 forwarded by V/Vig II/842/58/08 dated 11.5.2016.
Annexure A22: Copy of the representation against Annexue A21 on 10.6.2016.
Annexure A24: Copy of representation against Annexure A23.