

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/00603/2010**Jabalpur, this Thursday, the 15th day of February, 2018**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBERA.K. Nitant, S/o Shri H.C. Nitant
Aged about 39 years, PGT (Bio)
Kendriya Vidyalaya Barwaha (M.P.) 451115
R/o Qua No.3/3, K.V. Campus, Bawaha**-Applicant**(By Advocate –**Shri Manoj Sharma**)**V e r s u s**1. Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahid Jeet Singh Marg, New Delhi 110011
Through it's Commissioner2. Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shahid Jeet Singh Marg
New Delhi 1100113. Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shahid Jeet Singh
Marg, New Delhi 1100114. Assistant Commissioner,
Kendriya Vidyalaya Sangathan
Bhopal Region, Opp. Maida Mill,
Bhopal 462011 (M.P.)5. Principal
Kendriya Vidyalaya
Barwaha (M.P.) 451115**- Respondents**(By Advocate –**Shri S.S. Chouhan**)
(Date of reserving the order:14.11.2017)

ORDER**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed by the applicant against the impugned order dated 10.03.2010 (Annexure A-1), whereby the applicant was imposed with a major punishment of “removal from service”. The aforesaid order was communicated to the applicant on 26.03.2010. The applicant has also aggrieved against the order dated 03.08.2010 (Annexure A-9) passed by the respondent No.2, whereby the appeal filed by him has been rejected.

2. The applicant in this Original Application has sought for the following reliefs:-

“8.i) Call for the entire original material record (service book and service file) pertaining to the instant controversy from the respondents for its kind perusal especially the original compliant made by Smt. Kaur.

8.ii) Quash and set-aside impugned order dated 10.03.2010 (Ann-A/1) passed by respondent No.4 (received on 26.03.2010) & the impugned rejection order of appeal dated 03.08.2010 (Annexure A/9) by respondent No.2.

8.iii) That after quashing Annexure A/1 & A/9 direct the respondents to grant all consequential benefits of pay, perks, status etc.

8.iv) Grant any other relief/s which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

8.v) Award the cost of the instant lis to applicant.”

3. The facts of the case are that the applicant was initially inducted on 17.11.1994 as T.G.T.(Science) with Kendriya

Vidyalaya Sangathan (for short 'KVS') and was promoted as P.G.T.(Bio) on 02.04.2004. The applicant, while working in Kendriya Vidyalaya, Shivpuri in December, 1996, he came into contact with Smt. Kuljeet Kaur being a colleague and senior. In the year 1997, Smt. Kaur has left for abroad. On 21.05.2005, the applicant got married with Smt. Himani. After the marriage, the applicant for the first time applied for nomination of Smt. Himani in service record viz. GPF, Employees' Group Insurance, DCRG etc. Prior to that, there is no declaration of Smt. Kuljeet Kaur as his spouse in the service record.

4. After the wedlock, applicant has at present two children. After 1 ½ year of the marriage, Smt. Kaur made a complaint which in turn resulted in a departmental inquiry against the applicant, that despite alive of his first wife, applicant has performed second marriage with Smt. Himani. The applicant was served with a charge sheet dated 21.05.2008 (Annexure A-2). The applicant has specifically submitted a reply denying all the charges. Thereafter a detailed departmental inquiry was contemplated against the applicant and he was punished by the disciplinary authority. Thereafter, the applicant had filed an appeal dated 26.03.2010 (Annexure A-7) which was also dismissed by the competent authority on 03.08.2010 (Annexure A-9).

5. The main grounds of the applicant are that the impugned conduct of the respondents has violated the fundamental rights of the applicant as enshrined and guaranteed under Article 14 and 16 of the Constitution of India. The applicant specifically has submitted that the aforesaid complaint as has been done by Smt. Kaur, has never been supplied to the applicant despite several repeated requests in conducting departmental inquiry. The applicant has specifically submitted objections on 24.08.2009 (Annexure A-4) with regard to non-supply of original documents i.e the complaint. It is particularly submitted by the applicant that during the entire departmental inquiry Smt. Kuljeet Kaur has not produced any valid documents or proofs which establishes the factum of marriage along with the applicant and the entire episode which is the genesis of the present controversy is simply an after thought of Smt. Kaur. The specific ground of the applicant is that he was exonerated by the Inquiry Officer for Articles I and III and for charge of Article II, the applicant has been proved, despite the fact that the Inquiry Officer has clearly stated in his report that the department was not able to produce any independent proof of marriage. The applicant has submitted his specific representation dated 13.01.2010 (Annexure A-6) on the inquiry report. The respondents without considering his submission as raised by the

applicant, has imposed the harsh punishment of 'removal from service' vide order dated 10.03.2010 (Annexure A-1).

6. Regarding charge of Article III, the disciplinary authority indicates that the charges against the applicant were found proved pertaining to charges of Article II and III. The applicant has submitted that at no point of time, prior to passing of impugned order dated 10.03.2010 (Annexure A-1), the disciplinary authority has given any dissent note with regard to disagreement with the findings of the Inquiry Officer pertaining to the charge of Article III of the charge sheet. So, holding the applicant's guilt proved pertaining to charge of Article III is bad in law. The appeal of the applicant was dismissed vide order dated 03.08.2010 (Annexure A-9) by the appellate authority was without application of mind.

7. The respondents, in their reply, have submitted that a complaint letter dated 17.02.2007 was received by the respondents from Smt. Kuljeet Kaur, P.G.T. (Geography) KV No.1 AFS Agra against second marriage of the applicant P.G.T. (Bio), KV, Barwaha and she has requested for strict departmental action be taken against the applicant. Vide memo dated 14.03.2007, the applicant has made representation dated 23.03.2007. Thereafter, the Principal, KV, Barwaha was asked vide respondent No.4's office letter dated 16.04.2007 to verify the details of family history

given in the service book of the applicant. The same was verified by the Principal and UDC. The applicant was issued a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as “**CCS(CCA) Rules**”) vide memo dated 21.05.2008. The applicant has submitted his statement of defense vide his representation dated 11.08.2008 and has denied all the charges framed against him. The Inquiry Officer after concluding the disciplinary proceedings against the applicant had submitted the inquiry report to the disciplinary authority. After agreeing with the inquiry report, the disciplinary authority has afforded an opportunity to the applicant to submit his representation in his defense under Rule 15 of CCS (CCA) Rules, 1965. The applicant submitted the same by filing a representation dated 13.01.2010. Thereafter, the applicant made an appeal dated 26.03.2010 before the appellate authority against the order of punishment dated 10.03.2010, wherein a penalty of “removal from service” was imposed upon him. He has also subsequently filed Original Application No.224/2010 before this Tribunal on 28.03.2010 and the same was disposed of vide order dated 09.04.2010. In compliance of order passed by this Tribunal, appeals of the applicant dated 26.03.2010 and 08.04.2010 made against the penalty order dated 10.03.2010 were examined and

considered by the appellate authority and conveyed the decision to the applicant vide order dated 03.08.2010 (Annexure A-9).

8. The respondents have also stated in their reply that as per Para 4.3 of the Original Application, it is in nature of confession by the applicant that he has come into contact with Smt. Kuljeet Kaur being a colleague and senior, the applicant has healthy understanding with Smt. Kaur while working at K.V. Shivpuri during December 1996. It has been submitted by the respondents that the applicant has twisted the real facts of his marriage with Smt. Kuljeet Kaur and when he had applied for his transfer on JSP/SPS Grounds for 2002-03, the applicant declared on 21.09.2001 that “my spouse Mrs. Kuljeet Kaur is presently employed as PGT (Geography) in KV No.1 Agra since 03.09.1998” under his name and signature. The Principal, KV Shivpuri being his controlling officer had verified with service records of the applicant and certified to be found correct. It is further submitted that Smt. Kuljeet Kaur made complaint to the Assistant Commissioner, KVS, RO, Bhopal vide her representation dated 17.02.2007 that the applicant married her in March 1998 at Shivpuri and thereafter when he was posted at Gwalior he married another girl without getting divorce from her and he had systematically started removing all the proves of her legitimate

marriage. The applicant thereafter applied for nominations of Smt. Himani in service record. The attestation form for police verification submitted by him in the prescribed format on 23.11.2000, Smt. Kuljeet Kaur Nitant has been mentioned as wife in the family history. The same was verified by the SDM, Agra vide letter dated 02.03.2001. Further the applicant declared through this Original Application that he got married on 21.05.2005, when joined at KV No.3 Gwalior. He had submitted an application dated 30.04.2004 for allotment of staff quarter stating his marital status in column 5(b) and (c) as 'married' & 'wife' respectively. The respondents have submitted that the applicant has committed a gross misconduct in violation of code of conduct for employees. Accordingly, supplying a copy of complaint by the Inquiry Officer did not find necessary as the points of complaints were under investigation. It has been stated by the respondents that the whole service record of the applicant was examined. The applicant was called an explanation vide memo dated 14.03.2007. After considering the explanation given by the applicant, the disciplinary authority decided to initiate disciplinary action and issued charge sheet under Rule 14 of the CCS(CCA) Rules, 1965. The respondents have afforded him all opportunities as admissible under the Rules. However, the complaints based on which the

inquiry is initiated need not be included in the list of documents as per Govt. of India instructions contained under Rule 14 of CCS(CCA) Rules, 1965. However, as per Daily Order Sheet of hearing of 24.08.2009, the complaint of Smt. Kuljeet Kaur was admitted as S-20 which has been shown to the CO. The copy of the same was not given to the applicant but the applicant was given opportunity by the Inquiry Officer to cross examine the complainant Smt. Kuljeet Kaur. All opportunities were extended to the applicant as permissible under Rules.

9. The replying respondents has further submitted that the charges has been fully established by the Inquiry Officer during the inquiry and it has been proved that the applicant contacted into second marriage on 21.05.2005 without getting divorced his first wife in violation of code of conduct. It has been further submitted that the charges under Article I and III could not be established by the Inquiry Officer. Regarding charge at Article I, it is stated that IO has also observed that the service books of staff are kept in safe custody of the Principal, but it is a fact that the service books are taken for making day-to-day entries therein. The interested staff with bad intention keeps close watch to get the records tampered and it was done very secretly, according to which he succeeded in his aim as it was not gainful to other staff. So it could not be

proved due to technical reasons. It has been further submitted in the reply that regarding charge of Article III, the applicant was appointed as TGT (Science) on trial basis and his services were regularized w.e.f. 02.07.1997. He was aware of the provisions for counting of seniority as laid down in the Education Code for KVs. When the provisional seniority list was circulated by the Sangathan, with the instructions to rectify if any of the incorrect particulars mentioned therein, the Charged Officer (CO) had not given any representation for correction of his seniority list. Based on incorrect seniority list, the applicant applied for removal of anomaly in his pay in TGT grade and also got promotion to the post of PGT (Bio.) based on the false seniority number which cannot be ignored. It is submitted by the respondents that after carefully gone through the charge sheet, statement of defence, report of the Inquiry Officer, the representation submitted by the applicant, findings of the Inquiring Authority and all other relevant documents, the disciplinary authority found that gravity of the charge is clearly established against him and accordingly a penalty of 'removal from service' was imposed upon him vide order dated 10.03.2010 which has been approved by the appellate authority while disposing off his appeal in compliance with the order passed by this Tribunal in OA No.224/2010.

10. The applicant has also filed rejoinder wherein he has reiterated its earlier stand as quoted in the Original Application. It has further been submitted by the applicant that he was served with a charge sheet and three charges were leveled against him out of which applicant was exonerated by the Inquiry Officer by charge No.1 and 3 which has been mentioned by the IO in its report. It was further submitted by the applicant that Smt. Kuljeet Kaur had not made any police complaint against him and no case was registered against the applicant. Furthermore, the applicant informed that Smt. Himani, who is legally wedded wife of applicant. The complainant never submitted any legal proof of marriage with her.

11. We have heard the learned counsel for both the parties, and also gone through the documents annexed with the pleadings.

12. It is clear from the record that the complainant has filed the complaint to the respondent-department against the applicant in the year 2005 i.e. after the marriage of applicant with Smt. Himani. Memorandum dated 21.05.2008 (Annexure A-2) was issued to the applicant along with the statement of article of charges, statement of imputation of misconduct of misbehavior in respect of article of charges and also the documents attached with the charges against the applicant stipulated. From this document itself as per Annexure

III attached with Annexure A/2 in the Original Application, no compliant filed by the complainant has been communicated to the applicant. Furthermore, in the list of witnesses by whom the articles of charges were framed against the applicant were proved. There were only two witnesses i.e Shri V.R. Pardesi, Retired Principal, KV Barwaha and Shri Anant Puranik, UDC, KV Mhow. There were not any other witnesses other than the above two witnesses as per documents Annexure IV attached with Annexure A/2 with the Original Application.

13. It has been specifically submitted by the applicant that the whole case of the department is based on the complaint filed by the complainant Smt. Kuljeet Kaur. The applicant has moved an application vide letter dated 24.08.2009 (Annexure A-4) and requested the Principal/Inquiry Officer that for preparation of defense statement and cross examination of witness, the documents of Mrs. Kuljeet Kaur be provided. It has given in the reply of the replying respondents in Para 39 that as per Daily Order Sheet of hearing of 24.08.2009, the copy of the complaint was not given to the applicant but the applicant was given opportunity by the Inquiry Officer to cross examine the complainant Smt. Kuljeet Kaur. In Para 35 of the reply, it has specifically stated that the Inquiry Officer did not find necessary to provide coy of complaint

as per the extant rules, as the points of complaints were under investigation. From this itself clear that the request of the applicant was rejected for supplying the copy of complaint which was an important document on which the whole inquiry has been initiated. As the inquiry has been initiated and the procedure prescribed under Rule 14(3)(i)(ii) and 14 (4) of the CCS(CCA) Rules 1965 should have been complied with. The relevant portion of the same is as under:-

“(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

14. But the Inquiry Officer has not supplied the relevant documents, which are the important document on which the whole

basis of the inquiry is initiated. As per Annexure A-2 it has already observed (supra) that there are only two witnesses, who are to prove the case of the prosecution. It is very strange that the person who has made a complaint has not been made witness. So, the important right of the applicant/delinquent to cross-examine the witness has been deprived of. So, there is a violation of Rule 14 (4) of the CCS(CCA) Rules, 1965 and also violation of principle of natural justice which has caused prejudice to the applicant. So, the refusal of the Inquiry Officer for supplying copy of complaint amounts to prejudice the defense of the applicant itself.

15. As per Rules 14(14) and 14(15) of the CCS(CCA), Rules, 1965, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The relevant Rules 14(14) & 14(15) are as under:

“14(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presiding Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of

the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

14(15) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.”

16. In the instant case, it has already been observed (supra), the important witness i.e. Smt. Kuljeet Kaur has not been made as a witness and was not allowed to cross examine, due to the fact that neither the compliant has been produced as witness, nor the opportunity to cross examine is provided to the applicant. On this sole ground the inquiry proceedings itself is illegal and unlawful.

17. The learned counsel for the applicant has relied upon the judgment passed by the Hon'ble Apex Court in the matter of **State**

of U.P. vs. Shatrughan Lal & Another 1998 (6) SCC 651. The operative portion Paras 9 and 10 of the order read as under :-

“9. This paragraph of the written statement contains an admission of the appellant that copies of the documents specified in the charge sheet were not supplied to the respondent as the respondent had every right to inspect them at any time. This assertion clearly indicates that although it is admitted that the copies of the documents were not supplied to the respondent and although he had the right to inspect those documents, neither were the copies given to him nor were the records made available to him for inspection. If the appellant did not intend to give copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which the copies were asked for by him may be inspected. The access to record must be assured to him.

10. It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself.”

18. The applicant has also relied upon the judgment passed by the Apex Court in the case of **The Govt. of Andhra Pradesh and others vs. A. Venkata Raidu** 2007(1) SCC 338 the relevant portion reads as under:-

“10. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any

material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge No. 1, what is mentioned is that the respondent violated the Orders issued by the Government. However, no details of these Orders have been mentioned in Charge No. 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the G.O which is said to have been violated by the respondent, the number of that G.O, etc. but that was not done. Copies of the said G.Os or directions of the Government were not even placed before the Enquiry Officer. Hence, Charge No. 1 was not specific and hence no finding of guilt can be fixed on the basis of that Charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessor. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.”

(emphasis supplied)

19. Secondly from the record itself it is clear that the marriage of the applicant with Smt. Himani was solemnized in the year 2005 and from the legal wedlock there are two children also. The complainant had made the complaint after 1 ½ years and the complainant remained silent for long period. In such circumstances, the complainant was an important witness. The inquiry officer has completed the inquiry and was forwarded to the applicant vide Annexure A/5. From the bare perusal of the inquiry report, it clearly indicates that for Article I & III, the applicant was exonerated by the Inquiry Officer. Regarding Article II the charge has been proved. But Inquiry Officer clearly stated in his report that the department was not able to produce any

independent proof of the marriage. So, the finding of the conclusion of the Inquiry Officer itself is contradictory. Regarding which the applicant has also made representation dated 13.01.2010 (Annexure A/6). But the disciplinary authority has not taken note of it and passed the impugned order dated 10.03.2010 (Annexure A/1). As per Annexure A/1, it clearly indicates that the respondents have admitted the charge of Article I could not be proved due to technical reasons. But for charges of Article II & III, the applicant was found guilty. So, while concluding the charge of Article II, the disciplinary authority has opined that the charge of Article II stands proved but while dealing with the charge of Article III in the impugned order dated 10.03.2010 (Annexure A/1), the disciplinary authority has specifically wrote that the charged officer for his pay fixed after anomaly in his pay was removed and also got promoted based on false seniority. Meaning thereby the disciplinary authority has found the charge of Article III proved pertaining to charge of Article II & III. But the disciplinary authority has not given any dissent note with regard to disagreement with the findings of the Inquiry Officer pertaining to charge of Article III of the charge sheet. The said disciplinary authority has in a gross violation of Rule 15(2) of the CCS (CCA) Rules 1965.

20. The learned counsel for the applicant has relied upon the judgment passed by the three Judge Bench of Hon'ble Apex Court in the matter of ***Punjab National Bank and others vs. Kunj Behari Mishra*** (1998) 7 SCC 84 and also in the case of ***Yoginath D. Wagde vs. State of Maharashtra*** 1997(7) SCC 739. The relevant portion of Rule 15(2) of the CCS(CCA) Rules 1965 reads as under:-

“15(2). The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

21. Furthermore, the respondent-department has further violated Rule 14 (18) of the CCS(CCA) Rules, 1965 which contemplates that the Inquiry Authority, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to examine any circumstances appearing in the evidence against him. The learned counsel for the applicant has relied upon the judgement of the Hon'ble Apex Court in the case

titled as *Ministry of Finance* vs. *S. B. Ramesh* (1998) 3 SCC 227, wherein it has been held by the Hon'ble Apex Court that the compliance of Rule 14(18) of CCS(CCA) Rules 1965 to be mandatory.

22. If the inquiry report as per Annexure A-5 is perused, regarding charge of Article I while analyzing and assessing the evidence the Inquiry Officer has come to the conclusion that the possibility of the accidentally dropped the gum of the relevant documents cannot be ruled out and it would be unfair to charged officer guilty of the act and it has been further observed by the Inquiry Officer that the two witnesses merely reiterated what was already stated in the written statements. So it was decided not to examine again. Therefore, the same was not taken on record then as a similar record of the examination-in-chief could not be made available. Similarly regarding charge of Article II the Inquiry Officer has observed that the charged officer himself accepts relationship he had developed with Smt. Kuljeet Kaur as colleague who according to him was in calamitous need of support. It was further observed by Inquiry Officer, the entries in Mrs. Kuljeet Kaur service book could not be verified as the copy of a duplicate service book produced by the department was not properly authenticated. So, the department was not able to produce any

independent proof of marriage. Similarly, regarding Article III it has been observed by the Inquiry Officer that the department has not produced any evidence that the charged officer has deliberately misguided the authorities in this matter. But in the findings it has been recorded by the Inquiry Officer that the charge under Article I and III are not proved and Article II has been proved. So it is clear from the inquiry report itself that the findings of the Inquiry Officer is vague and is not based on evidence on record and it amounts to perversity as the Inquiry Officer has travelled beyond the evidence. Similarly when the applicant made the appeal to the appellate authority vide Annexure A-7, the appellate authority has passed Annexure A-9. While dealing with the appeal of the applicant, the appellate authority has observed that the complaint of Mrs. Kuljeet Kaur was not made the document as per Annexure III of the charge sheet, thus, it was not provided to the charged officer. However, he was given due opportunity by the Inquiry Officer to cross examine. The Inquiry Officer has established the charge based on documentary evidence wherein the applicant has declared Mrs. Himani as his wife while his first wife was alive and not got divorced from her he contracted into second marriage. So the fact regarding his first marriage stands well established.

23. It is pertinent to mention that the above stated observation of the appellate authority is also itself very vague and we are of the view that the first appellate authority has not applied his mind at all. The first appellate authority has also travelled beyond the evidence available on record and the conclusion given while deciding the appeal amount to perversity.

24. In view of the above observations, the inquiry report and the order passed by the appellate authority are vague and perverse as both the authorities /department have travelled beyond the evidence on record and conclusion is based on no evidence. So findings are perverse.

25. Resultantly, the Original Application is allowed and impugned orders dated 10.03.2010 (Annexure A-1) and 03.08.2010 (Annexure A-9) are quashed and set aside and respondents are directed to grant all consequential benefits of pay, perks, status etc. within a period of 90 days from the date of receiving the copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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