

**RMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

**A.F.R.
(Court No. 1)
List 'A'**

Original Application No. 262 of 2012

Monday, this the 24th day of April, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

No 16017261M Rfn Mahesh Singh @ Shyam S/O Shri Chandra Mohan Singh Rathore, R/O vill-Chanderpur, Post Office-Chanderpur, Tehsil Chhibramau, Distt-Kannauj (UP)-209729, Unit-7 Raj Rif Bn.

Ld. Counsel for the applicant : **Shri Shailendra Kumar Singh,**
Advocate

Versus

1. Union of India, Through its Secretary, Govt. Of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. Commanding Officer, 7 Raj Rif Bn C/O 56 APO.
4. Officer-in-Charge, Records, The Rajputana Rifles Regiments, Delhi Cantt.
5. General Officer Commanding –in-Chief HQ Northern Command, 56 APO.
6. Brigade Commander, 45 Inf Bde, C/O 56 APO.
7. Rani Devi, D/O Shri Surendra Kumar Singh, R/O Village-Parsonla, PS-Bilgram, Distt: Hardoi (UP).
8. Secretary, Zila Sainik Board, Hardoi (UP).

.....Respondents.

By **Shri D.K. Pandey**, Ld. Counsel for the respondents assisted by Maj Piyush Thakran, OIC, Legal Cell.

ORDER (Oral)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of discharge dated 13.03.2012 on the ground of plural marriage.
2. We have heard Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents assisted by Maj Piyush Thakran, OIC Legal Cell and perused the records.
3. Admittedly the applicant was enrolled in the Indian Army as Sepoy on 22.12.2003. During course of service, show cause notice (Annexure A-2) was served on the applicant on 12.08.2011 on behalf of GOC-in-C Northern Command for grant of maintenance allowance to the legally wedded wife Smt Rani Devi. Yet by another notice of the same date, i.e. 12.08.2011 (Annexure A-3), the applicant was also directed to show cause why he may not be discharged from service on the ground of plural marriage. Smt Rani Devi, admittedly the legally wedded wife, was granted maintenance allowance after serving show cause notice vide order dated 03.10.2011. In pursuant to show cause notice dated 12.08.2011 so far as grant of maintenance allowance to Smt Rani Devi is concerned; it has not been disputed by the respondents counsel. Notice dated 29.01.2012 was served upon the applicant to show cause as to why his services may not be terminated on the ground of plural marriage. The applicant submitted reply dated 11.02.2012 and denied second marriage with Smt Vinay Kumari. However reply submitted by the applicant was not found to be satisfactory and in consequence thereto he was discharged from

service on 13.03.2012. Order of discharge was passed on administrative ground under para 333 (C) (c) of the Regulation for the Army, 1987 read with Section 20 of the Army Act, 1950 and Rule 17 of Army Rules, 1954. Being aggrieved with the impugned order of discharged the present O.A. has been filed.

4. It is submitted by Ld. Counsel for the applicant that there is no material or evidence on record which may establish that the applicant was married Smt Vinay Kumari. No evidence has been recorded with regard to holding any ceremony in accordance with provisions contained in the Hindu Marriage Act by custom, practice or in accordance with any law for the time being in force, since date, time and place of marriage has not been established and proved by the respondents by recording evidence. It is submitted that discharge from service suffers from vice of arbitrariness.

5. Ld. Counsel for the applicant relied upon the case of ***Kanwal Ram & Ors vs the Himachal Pradesh Administration*** (decided by Hon'ble Supreme Court vide judgment dated 19.08.1965) and one another judgment of ours delivered in O.A. No. 130 of 2014, ***Adesh Kumar vs. Union of India & Ors*** (decided on 09.02.1916).

6. On the other hand Shri D.K. Pandey, Ld. Counsel for the respondents vehemently argued and submitted that according to police report the applicant was married to Smt Vinay Kumari. However attention has been invited by Ld. Counsel for the applicant to Annexure-A12, affidavit filed by Smt Vinay Kumari according to which she was not married to the applicant. The categorical averment of Smt Vinay Kumari has not been rebutted by trustworthy evidence.

7. In the case of **Kanwal Ram** (supra) their Lordships of Hon'ble Supreme Court have held that while holding a person for bigamy it must be established that the person concerned has solemnised the marriage which must be proved with cogent and trustworthy evidence. Relevant portion from the judgment in the case of **Kanwal Ram** (supra) is reproduced as under:-

“It was contended for the appellants that this evidence was not enough to show that the marriage of Kubja and Kanwal Ram can be said to have been performed. We think this contention is justified. In Bhaurao Shankar Lokhande v. The State of Maharashtra (1) this Court held that a marriage is not proved unless the essential ceremonies required for its solemnisation are proved to have been performed. The evidence of the witness called to prove the marriage ceremonies, showed that the essential ceremonies had not been performed, so the evidence cannot justify the conviction. The trial court also put the same view. The learned judicial Commissioner does not seem to have taken a different view.”

8. We have also while deciding identical in O.A. No. 130 of 2014, **Adesh Kumar vs. Union of India & Ors** (supra) considered a question with regard to bigamy and held that it shall always be incumbent on the Army/prosecution to establish that marriage was solemnised and ceremonies were held in accordance with rituals, customs and traditions. Different provisions of Army Instruction have been considered in the case of **Adesh Kumar** (supra).

9. Army Order 44/2001/DV which deals with bigamy has been taken into account in the judgment of **Adesh Kumar** (supra). For convenience sake para 10 and 11 of the judgment is reproduced below:-

“10. A literal interpretation of the aforesaid provision of AO No 44/2001(DV) shows that before taking a decision it shall be incumbent upon the appropriate

authority to find out whether plural marriage is permissible or not permissible along with eligibility or ineligibility for enrolment/appointment in Army.

In the present case no exercise has been done keeping in view the aforesaid guidelines contained in AO 44/2001 (DV). Further paras 5, 6, 7, 8 and 9 (supra) show that on certain grounds plural marriage is permissible i.e. (i) in case the wife of army personal has deserted him and there is sufficient proof such desertion; (ii) his wife has been medically certified as being insane; and, (iii) there is sufficient proof of infidelity of the wife proof before the court of law and in case any one or more of said grounds are satisfied, plural marriage seems to be permissible. It means the appropriate inquiry should be done before discharging army personal keeping in view allegations with regard to plural marriage in the light of different conditions provided in AO 44/2001 (DV) (supra).

11. As stated above in the present case the provisions contained in AO 44/2001 (DV) seems to not have been complied with. The order of discharge seems to have been passed without following due process of law, hence suffers vice of arbitrariness. Opportunity must have been given with preliminary inquiry to the applicant to explain his case with regard to plural marriage and to justify it in the light of AO 44/2001 (DV). Since admittedly no opportunity was given the order seems to be violative of principles of natural justice as well as procedure prescribed for the purpose”.

10. In view of the settled proposition of law, we are of the view that respondents have failed to establish bigamy in accordance with Army Instruction (supra) as well as law settled by Hon'ble the Supreme Court. Discharge/dismissal of a person depriving him source of livelihood merely on the basis of police report does not seem to be justified and suffers from vice of arbitrariness. The police report is not a substantive piece of evidence and the burden lies on the respondents to establish that any Army personnel entered into second marriage and ceremonies were performed for the purpose. The respondents seem to have failed to prove the alleged bigamy by the

applicant, that too under the teeth of affidavit filed by Smt. Vinay Kumari.

11. We are dealing with a number of cases where the members of Armed Forces have been discharged on account of bigamy. In the majority of cases, we find that bigamy has not been proved by cogent and trustworthy material with regard to marriage. The marriage must be proved through evidence in accordance with practice, rituals, customs and traditions of the parties or that the parties entered into wedlock under the Special Marriage Act or any law for the time being in force. Before taking action, it shall be incumbent on the Armed Forces to look into settled proposition of law to ensure that marriage has been established and ceremonies have been proved and decision should not be taken merely on the basis of police report. Reasonable opportunity should be taken to the prosecution as well as the defence to establish and deny solemnization of marriage. Ordinarily, respondents should have exercised powers under Section 20 of the Army Act, 1950 for discharge of member of Armed Force where allegation is of bigamy and should ensure that sufficient material is available on record to establish ceremonies with regard to marriage and only thereafter inference should be drawn with regard to misconduct/offence of bigamy.

12. It is undoubtedly true that illicit relationship construes a serious misconduct on the part of Armed Forces personnel depending on the facts and circumstances of each case, but for that, the Armed Forces should amend their Rules and make it part of misconduct and only thereafter they can punish members of the Armed Forces which is

based on rule of law. In the absence of any provision which may declare illicit relationship as an offence or misconduct, the respondents have no right to punish the members of the Armed Forces. It shall be appropriate for the respondents to make necessary amendment in the service conditions and provided illicit relationship itself as an offence/misconduct and only thereafter they should proceed to punish by sentencing a member of the Armed Forces for such crime.

13. However, certain statutory provisions provide that a member of Armed Forces shall be unbecoming if he indulges in such activities which may bring disrepute to the Army, but for that purpose charges have to be framed for violation of good order and discipline instead of punishing such person being guilty of bigamy. Once bigamy is to be proved, ofcourse, the Armed Forces can come forward with a case of committing misconduct with the allegations of illicit relationship and then appropriate punishment may be awarded to such an offender in accordance with the provision contained in Section 63 of the Army Act, 1950, i.e. violation of good order and discipline which is wide enough and encompass the offence, allegation should with regard to illicit relationship instead of bigamy and that too should be proved by cogent and trustworthy evidence.

14. We hope and trust that respondents shall look into the matter and ensure that while proceeding against a member of Armed Forces, allegations of bigamy must be proved in accordance with law (supra) and in case there is no evidence they may from the very beginning charge the member of the Armed Forces with violation of good order

and discipline with regard to illicit relationship or for any other offence punishable under law for the time being in force.

14. Subject to our observations made in the body of the order, we find that the respondents have failed to prove the offence of bigamy and the O.A. deserves to be allowed.

15. The O.A. is allowed accordingly. The impugned order of discharge dated 13.03.2012 is set aside with all consequential benefits. The applicant shall be restored in service within four months from today with all consequential benefits.

No order as to costs.

16. Copy of the present order shall be sent by the Registry to Chief of the Army Staff, Chief of the Air Staff and Chief of Naval Staff to look into the matter in appropriate way so that members of the Armed Forces may not suffer because of omission/commission of the respondents in the garb of allegation of bigamy and charges be framed correctly in accordance with law,

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: April 24, 2017

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