

AFR**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO.1****Original Application No. 21 of 2013**Monday, this the 23rd day of January, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex-Hav/ Clk Pramod Kumar Singh
 (Army No. 4271229-L) of Station Headquarter,
 Muzaffarpur (Bihar), aged about 41 years,
 son of Shri Dharm Nath Singh, resident of Village-
 Gawandry, Post- Gawandery,
 District- Saran (Chhapra) (Bihar)- 841430

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Applicant

Versus

1. Union of India, through the Secretary,
Ministry of Defence, New Delhi.
2. Chief of the Army Staff,
Integrated Headquarter of the Ministry of
Defence, South Block, New Delhi- 110001.
3. General Officer Commanding-in-Chief,
Central Command, Lucknow (U.P.).
4. Officer-in-Charge Records,
Bihar Regimental Centre,
Danapur Cantt- 801503.
5. Station Commander, Station HQ,
Muzaffarpur (Bihar).
6. Smt. Umrawati Devi,
daughter of late Teg Bahadur Singh,
resident of village- Attanagar, Post- Isuapur,
District – Saran (Bihar), Pincode- 841411.
7. Miss Mintu Singh,
daughter of Shri Baban Singh,
Village and Post – Dumri,
District – Muzaffarpur (Bihar), Pincode - 843107

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Respondents

Learned counsel appeared
for the petitioner

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Col. (Retd) R.N. Singh, Advocate

Learned counsel appeared for the respondents - Shri Asheesh Agnihotri, Standing Counsel, assisted by Col Kamal Singh, OIC Legal Cell

ORDER

Per Justice D.P. Singh

1. This is an application preferred under Section 14 of the Armed Forces Tribunal Act, 2007 (in short hereinafter referred to as Act), being aggrieved with the impugned order of dismissal dated 09.12.2012, as contained in Annexure No. A-1 (ii) to the petition on the ground of plural marriage.

2. We have heard learned counsel for the applicant Col (Retd) R.N. Singh, Shri Asheesh Agnihotri, learned Standing Counsel, assisted by Col Kamal Singh, OIC Legal Cell, for the respondents and perused the record.

3. The applicant was enrolled in the Indian Army (Bihar Regiment) on 02.01.1993. The controversy relates to the period when the applicant was posted at Muzaffarpur, Bihar w.e.f. 01.09.2010. The applicant was married to one Smt. Umrawati Devi daughter of Shri Teg Bahadur Singh, District Saran, Bihar. However, in spite of giving matrimonial name, it appears that the name of the applicant's wife was not entered in the required format of Army in his IAFF-958 at the time of enrolment. According to the material on record, Smt. Umrawati Devi married to applicant on 22.06.1991 but because of

delay in publication of Part II order, the date of marriage was shown as 05.06.1996. According to the prosecution the applicant contracted second marriage on 20.11.2002 with the consent of his first wife Smt. Umrawati Devi because first wife was issueless due to gynecological problem even after 11 years of matrimonial life. It is further contended that both the wives lived alongwith the applicant from January, 2003 to January, 2005 at Danapur. When the applicant deployed in Nowshera (J & K), applicant's both wives went to the native place/village of the applicant and stayed there together. However, for some reason, it is alleged that the first wife of the applicant submitted an application for the grant of maintenance in the month of January, 2010 and punishing the applicant for contracting plural marriage. According to the respondents' version the applicant was on annual leave w.e.f. 08.01.2010 to 04.02.2010 and solved the problem with mutual settlement. However, he was facing two courts cases, filed by family members, one in criminal matter under Sections 323, 498-A and 494 I.P.C. in Sessions Court, Chhapra and another in Family Court, Chhapra under Section 125 Cr.P.C. for maintenance preferred by the first wife Smt. Umrawati Devi. When this fact was came to the knowledge of Commanding Officer on applicant's own information, after due notice he was dismissed from service on 08.01.1993 by the orders of GOC-in-C, Central Command for contracting plural marriage.

4. The allegation with regard to plural marriage has been denied by the applicant and the applicant has submitted that there is

no material on record, which may indicate that the applicant has ever entered with wedlock with another lady. It is also submitted that applicant's wife Smt. Umrawati Devi filed a case under Section 125 of Criminal Procedure Code before the Principal Judge, Family Court, Chhapra, which granted maintenance at the rate of Rs.4,000/- per month to her. Smt. Umrawati Devi, applicant's wife also filed a criminal case on 13.11.2009 before the Sessions Court, Chhapra under Section 323, 498-A and 494 of the Indian Penal Code. However, the complaint was withdrawn by the applicant's wife Smt. Umrawati Devi on 20.12.2011, as contained in Annexure-3 to the application. It is also submitted by the learned counsel for the applicant that the material relied upon by the respondents with regard to plural marriage is 'acceptance of marriage' in a case filed in the Family Court. However, it is submitted that till date no competent court has recorded any finding against the applicant with regard to second marriage or plural marriage of the applicant. By the judgment dated 01.10.13 the Judicial Magistrate, Saran, Bihar has dismissed the complaint filed by the wife of applicant Smt. Umrawati Devi under Section 323, 494 and 499A of Indian Penal Code. Copy of the judgment and order dated 01.10.2013 of the Court acquitting the applicant has been annexed as Annexure No. S.A. 1 to the supplementary affidavit dated 03.03.2014. It is also submitted that in the absence of any conclusive finding by the civil court, only because in some document in certain papers of the proceedings pending in the trial court there is mention of second

marriage, cannot amount to an admission of plural marriage, unless some categorical finding is not recorded by the competent court to this effect. Learned counsel for the applicant has relied upon the decisions of Hon'ble Supreme Court in the cases of **Ram Parkash vs. The State of Punjab** reported in 1959 AIR (SC) 1 and **Mohd. Hussain Umar Kochra & others vs. K.S. Dalipsinghji & another** reported in 1969 SCR (3) 130. In response to the arguments advanced by the learned counsel for the applicant, it is argued by Shri Asheesh Agnihotri, the learned Standing Counsel for the respondents, assisted by Col Kamal Singh, OIC Legal Cell that the facts of the present case and facts of cited cases are totally different, hence the ratio of the citations, cited upon by the applicant is not applicable to the instant case and the original application deserves to be dismissed.

5. Further submission of the learned counsel for the applicant is that the order of dismissal was passed at the time when the dispute between the applicant and his wife was pending before the competent civil court. Regulation 333-C(c) of the Regulations of the Army, 1987 prohibits to take action for plural marriage during the pendency of matter before the civil court. It is also argued that the order of dismissal has been passed in pursuance to provisions of Section 20(3) of the Army Act. There appears no dispute that the order of dismissal has been passed exercising administrative power for the plural marriage in pursuance of provisions contained in Section 20 (3)

of the Army Act. For convenience Section 20 of the Army Act is reproduced below:-

“20. Dismissal, removal or reduction by the Chief of the Army Staff and by other officers.- (1) The Chief of the Army Staff may dismiss or remove from the service any person subject to this Act, other than an officer.

(2) The Chief of the Army Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from any person serving under his command other than an officer or a junior commissioned officer.

(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade rank or the ranks, any warrant officer or any noncommissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a Sepoy.

(6) The commanding officer of an acting non commissioned officer may order him to revert to his permanent grade as a non- commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.”

A plain reading of Section 20(3) shows that it is simply an enabling provision to be exercised with due compliance of principles of natural justice and procedure prescribed by law. Enabling provision does not mean that the authorities may pass an administrative order without following the principles of natural justice and procedure prescribed by law.

6. Rule 17 of Army Rules, 1954 provides that if a person is to be dismissed or removed from service on the ground of conduct, which has led to his conviction by a criminal court or a court-martial, it shall be done only after serving a show cause notice. In the present case the applicant has not been convicted by a criminal court or court martial. Merely on the basis of a complaint allegedly submitted by his wife he has been dismissed from the service, that too during pendency of the matter before the civil court having jurisdiction to adjudicate the controversy. Moreover, when complaint submitted by the applicant's wife seems to have been undisputedly withdrawn on 20.12.2011, as contained in Annexure-A-2 and criminal case resulted in acquittal, then what prompted to respondents to dismiss the applicant from service, which has not borne out from the record. The impugned order seems to have been passed in utmost haste and that too without taking note of conditions provided under Rule 17 of the Army Rules, 1954. When it has been brought on record that even Zila Sainik Kalyan Board, Chhapra at three occasions intimated the Army authorities that the applicant is married to Smt. Umrawati Devi (supra) and there is no material to establish the plural marriage then the order of dismissal passed against the applicant shows a high handedness on the part of respondents.

7. The Defence Services Regulations are framed under the authority of Section 192 of the Army Act, 1950. Regulation 333-C(c) of

the Army, which is relevant to adjudicate the controversy is reproduced as under :-

“333. PLURAL Marriages.—

(C) Plural Marriage by persons in whose case it is not permissible—

(a)

(b)

(c) When it is found, on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as sub judice and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex-post-facto sanction can be accorded as such marriages are contrary to the law of the land. ”

A plain reading of the aforesaid regulation shows that during pendency of a controversy before the competent civil court no action should be taken by the Army authorities for alike controversy. In such a situation it was not incumbent upon the authorities and the respondents to proceed against the applicant by awarding major penalty of dismissal from service, that too in spite of the fact that they were conscious with the provisions of Regulation 333-C(c) of the Army Regulations and Section 20 (3) of Army Act read with Rule-17 of Army

Rules, as is evident from the notice dated 03.04.2012, copy of which has been filed as Annexure-A-1(iv) to the original application.

8. Apart from the above, Army Order 44/DV/2001, a photo stat copy of which has been filed as Annexure No. A- 4 to the original application, provides that cases of JCOs and OR will be submitted to the GOC-in-C, who shall decide to take action against the individual and such matters should be forwarded by the Commanders with their recommendation. Needless to say while sending such recommendation, it shall be obligatory to the Commanders to proceed with some enquiry and then forward the recommendation. For convenience Paras-6, 7, 8, 11 and 12 of the Army Order (supra) are reproduced as under :

- “6. An individual may, during the life time of his wife apply for sanction to contract a plural marriage on any one or more of the following grounds :-
- (a) His wife has deserted him and there is sufficient proof of such desertion;
 - (b) His wife has been medically certified as being insane.
 - (c) Infidelity of the wife has been proved before a court of law.
7. Applications will state the law under which the subsisting marriage was solemnized, registered or performed and will include the following details where applicable:-
- (a) Whether the previous wife will continue to live with the husband:
 - (b) If the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner:
 - (c) Name, age and sex of each child by previous marriage and the maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion: that he had not solemnized or registered his previous marriage under the Special Marriage Act, 1954 and that the Hindu Marriage Act, 1955 is not applicable to him.

8. Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.
9. An individual whose marriage is alleged to have been dissolved according to any customary law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of alleged custody or personal law. Existence and validity of the same, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authority action will be taken to publish casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.
10. An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Head quarters but may be rejected by the GOC-in-C of the Command concerned.
11. Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in Para 5 above will be dealt with as under :-
 - (a) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with recommendations as to whether ex-post-facto sanction is to be granted or administrative action is to be taken against the individual.
 - (b) Cases of JCOs and Or will be submitted to the GOC-in-C Command who will decide whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual. In cases, where it is decided that administrative action should be taken against the individual his service will be terminated under orders of the competent authority.

When reporting cases to higher authorities, intermediate commanders will endorse their specific recommendations with reasons thereof. Here too, recommendations will be signed by the Commanders themselves or be personally approved by them. Also, an opportunity 'show cause' against the order of termination of service will always be given to the individual concerned.

12. In no circumstances will disciplinary action by way of trial by court martial or summary disposal be taken against an individual who is found to have contravened the provisions of para-5 above. If, however, the individual is also found to have committed, another offence connected with his act of contracting a plural marriage, disciplinary action for the connected offence may be taken and progressed in the normal manner."

A plain reading of the aforesaid Army Order further indicates that the complaint regarding plural marriage has to be proved under the law as to whether the subsisting marriage has been solemnized, registered or performed with certain other details (supra). In the present case the order of dismissal has been passed stating that the complainant has not come forward to establish whether it has been withdrawn by her as envisaged in the Army Order (supra). Apart from above, Army Order 44/DV/2001 further provides as to when an administrative order is to be passed. For convenience Para-14 of Army Order 44/DV/2001 is reproduced as under:-

"14. When it is found on receipt of a complaint from any source whatsoever that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in Para 11 above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as sub judice and the decision of the court awaited before taking any action. When a

person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Sec. 19 read with Army Rule 14 or AA Sec. 20 read with Army Rule 17 as the case may be. No ex-post-fact sanction can be accorded as such marriages are contrary to the law of the land.”

A plain reading of Army Order (supra) further shows that on the ground of plural marriage by administrative action termination may be initiated in case ceremony of plural marriage is brought into knowledge and forwarded to the higher authority in the manner laid down therein and where a cognizance has been taken by a civil court of competent jurisdiction, the matter may be treated as sub judice and decision of the court should be awaited for taking any such action.

9. Para-14 of Army Order 44/DV/2001 is in consonance with the Army Regulation 333-C(c) . Keeping in view the provisions of Para-14 Army Order 44/DV/2001 and Regulation 333-C (c) of Army Regulations (supra), the order of dismissal passed against the applicant seems to be a hasty decision, without following the due procedure prescribed by law and is not sustainable in the eyes of law. Number of cases are coming forward to the Tribunal awarding punishment on the ground of plural marriage. Para-14 of the Army Order categorically provides for the proof of ceremony of plural marriage. It indicates that unless the ceremony of plural marriage is proved, a person may not be punished on the ground of plural marriage. The Hindu Marriage Act, 1955 has got overriding effect on all laws for the time being in force. Section 5 deals with the conditions for a Hindu Marriage and Section 7 of aforesaid Act deals with certain ceremonies for Hindu Marriage. For

convenience both the Sections 5 and 7 of the Hindu Marriage Act are reproduced hereunder :-

“5. Condition for a Hindu Marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party,-
 - (a) is incapable of giving a valid consent of it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity or epilepsy;
- (iii) the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

7. Ceremonies for a Hindu marriage.-(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

A plain reading of the aforesaid Sections shows that apart from the fact that for valid Hindu marriage not only the spouse should be married but also certain ceremony in accordance with the custom or rituals should be performed, which may include Saptapadi under Section 7 of the Hindu Marriage Act for the purpose of facilitating proof of Hindu Marriage and the Government may make the rules for their registration. In the instant case, admittedly the applicant is Hindu, hence the provisions contained in Sections 4, 5, 7 and 8 are

very much applicable to him and while taking action against the army personnel for bigamy or plural marriage it shall be incumbent upon the authorities to prove ceremonies of marriage in accordance with the statutory mandate.

10. Apart from Hindu Marriage Act, 1955 sometime marriage takes place under the Special Marriage Act, 1954. For a marriage under the Special Marriage Act, Section 4 deals with the conditions for solemnization of special marriage. Section 5 provides with regard to publication of notice and Section 6 with regard to maintenance of records by the Marriage Officer in a book prescribed for that purpose. Under Section 7 objections are invited regarding the marriage under the aforesaid Act and Section 8 requires disposal of objections, if any. Under Section 9 of the Act, the Marriage Officer is empowered to make any inquiry regarding special marriage. Thereafter, a declaration is done under Section 11 of the Act, wherein the prescribed form is signed by the parties alongwith the witnesses. The place of solemnization has been provided under Section 12 and after solemnization of marriage a certificate is issued under Section 13. This certificate shall be conclusive evidence of marriage. For convenience Sections 4, 5, 6, 7, 8, 9, 11, 12 and 13 are reproduced hereunder :-

4. Conditions relating to solemnization of special marriage.-

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled namely:

(a) Neither party has a spouse living: (b) neither party-
 (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind, or
 (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 (iii) has been subject to recurrent attacks of insanity or epilepsy;
 (c) the male has completed the age of twenty-one years and the female the age of eighteen years; (d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship: and (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

Explanation- In this section, "customs, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribes, community, group or family, unless the State Government is satisfied-

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule is applicable only to a family, has not been discontinued by the family.

5. Notices of intended marriage.- When a marriage is intended to be solemnized under this Act, the parties of the marriage shall give notice thereof in writing in the Form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

6. Marriage Notice Book and publication.-

(1) The Marriage Officer shall keep all notices given under Sec. 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same. (2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office. (3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under Sec. 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

7. Objection to marriage.-

(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of Sec. 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in Sec.4.

(2)After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of Sec. 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

8. Procedure on receipt of objection.- *If an objection is made under Sec. 7 to an intended marriage the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdraw by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision. (2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the*

intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the District Court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the District Court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the Court.

9. Powers of Marriage Officers in respect of inquiries.-

(1) For the purpose of any inquiry under Sec.8, the Marriage Officer shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and inspection;

(c) compelling the production of documents;

(d) reception of evidence on affidavits; and

(e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of Sec.193 of the Indian Penal Code(45 of 1960).

2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs, by way of compensation not exceeding one thousand rupees, and award the whole, or any part thereof to the parties to the intended marriage, and any order of costs so made may be executed in the same manner as a decree passed by the District Court within the local limits of whose jurisdiction the Marriage Officer has his office.

11. Declaration by parties and witnesses.-

Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the Form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

12. Place and form of solemnization.-

(1) The marriage may be solemnized at the office of the Marriage Officer or at such other place within a reasonable

distance therefrom as the parties may desire, and upon such conditions and the payments of such additional fees as may be prescribed.

2) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,- "I (A) take thee (B), to be my lawful wife (or husband)".

13. Certificate of marriage.-

(1) When the marriage has been solemnized the Marriage Officer shall enter a certificate thereof in the Form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with. "

11. In view of the above, in case the marriage is solemnized under Special Marriage Act, then it shall be obligatory on the part of the respondents to prove aforesaid conditions of Special Marriage Act. Whether the marriage is under the Hindu Marriage Act or under Special Marriage Act, in both the cases, the burden shall be on the respondents/authorities to establish that the marriage was solemnized and it took place in the manner provided either of the aforesaid provisions under the respective Acts or any other law time being in force. In case it is not established, then the members of Armed Forces, including Army may not be discharged for plural marriage. In the present case plural marriage seems to have not been proved before

the respondents and action taken place merely on the basis of complaint, which also has later been withdrawn.

12. It is settled position of law that with the falling of character and standard of life, live in relationship seems to have become a way of life though in view of settled position of law such relationship will not have any right over the property of man but the children will have same rights over the property as the children born out from married wife. In such a situation it is always incumbent upon the Army authorities to record finding with regard to the second marriage or plural marriage by recording evidence to establish the marriage. In case the marriage is not established and it may not be turned in accordance with the established provisions of the family law of the person concerned then such person may not be dismissed or punished by the Army authorities only on the ground that he or she has got some relationship with some person, treating it as plural marriage. So far illicit relation is concerned, the Army authorities may take appropriate recourse in accordance with law and pass appropriate order of punishment but not on the ground of plural marriage. Marriage means marriage, in accordance with law, personal law or statutory provisions, otherwise it shall be only illicit relationship.

13. In view of the above, the impugned order of dismissal dated 09.12.2012 suffers from the vice of arbitrariness, being violative of statutory provisions and accordingly is liable to be set aside.

ORDER

14. Accordingly, the Original Application is allowed and the impugned order of dismissal dated 09.12.2012, contained in Annexure-A-1(ii) to the Original Application as also the discharge order dated 08.01.2013, passed pursuant thereto, contained in Annexure-A-1(iii) to the Original Application are set aside with all consequential benefits. Let consequential benefits be provided to the applicant expeditiously, say within a period of four months from the date of receipt of a certified copy of this order. OIC Legal Cell shall also communicate this order to the authorities concerned forthwith.

15. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

JPT

