

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 299 of 2016****Thursday this the 02nd day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Dinesh Singh, Son of Sri Lakshman Singh, Resident of Kanakhejadi, Post Office – Tondgarh, Police Station-Tondgarh, District – Ajmer, Rajsthan.

.....Applicant**Ld. Counsel for the Applicant: Shri SR Yadav, Advocate****Versus**

1. Union of India, through Principal Secretary Defence, Civil Secretariat, New Delhi.
2. The General Officer Commanding-in-Chief, Central Command, Lucknow.
3. 883 AT Bn ASC, C/o 56 APO.

..... Respondents**Ld. Counsel for the : Shri RKS Chauhan,**
Respondents Central Govt Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(A) That this Hon’ble Tribunal may kindly set aside/quash the impugned termination order dated d21.05.2015 annexed as Annexure No 1 to this O.A. and direct the opposite parties to reinstate the applicant with all consequential benefits in the interest of justice.

(B) That the cost of the original application may kindly be awarded to the applicant.

(C) That any other order, which this Hon’ble Tribunal may deem fit and proper may also be passed in favour of the applicant and against the opposite parties.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 08.07.2003. He was married to Smt Anita Chauhan on 11.05.2005. On 02.03.2006 a male child Master Aditya born to her. There was dispute between Smt Anita Chauhan and the applicant. As per service record of the applicant he was married to Smt Tara Devi, D/o Chan Singh on 09.03.2010. Smt Anita Chauhan moved a complaint to army authorities under Section 125 Cr.P.C claiming her as wife of applicant. A show cause notice was issued to the applicant to which applicant replied that Smt Anita Chauhan has dissolved the marriage by taking Rs. 1,06,000/- from the applicant and now she is not his wife but case is pending before the family court at Ajmer in which

notice was issued to the applicant. It was established that applicant contracted plural marriage with Smt Tara Devi, while his first marriage with Smt Anita Chauhan was still in subsistence. The service of the applicant was terminated under Section 20 (3) read with army Rule 17 and under para 333 (C) (c) of Regulation for the Army 1987 vide order dated 21.05.2015. Being aggrieved, applicant has filed instant Original Application to re-instate him in service.

3. Learned counsel for the applicant submitted that He was married to Smt Anita Chauhan on 11.05.2005. Smt Anita Chauhan stayed only two days in the applicant's house. Some dispute arose between the applicant and Smt Anita Chauhan with regard to character of Anita Chauhan. On 02.03.2006 a male child Master Aditya born to her. Learned counsel for the applicant submitted that at the time of marriage, Smt Anita Chauhan was pregnant, consequently the applicant's marriage was void ab initio as per Special Hindu Marriage Act. Applicant filed a case before family court at Ajmer, Rajasthan for testing the DNA of Master Aditya. When DNA testing matter came in the knowledge of Anita Chauhan, then she became ready to dissolve the marriage and in avenges taken Rs. 1,06,000/- from the applicant and became silent. Then the applicant married to Smt Tara Devi, D/o Chan Singh on 09.03.2010. Later on Smt Anita Chauhan moved a complaint with army authorities claiming her as wife of the applicant. Smt Anita Chauhan moved a complaint to army

authorities under Section 125 Cr.P.C. A show cause notice was issued to the applicant to which applicant replied that Smt Anita Chauhan has dissolved the marriage by taking Rs. 1,060,00/- from the applicant and now she is not his wife but case is pending before the family court at Ajmer. While posted at 883 AT Bn ASC Barailly a show cause notice was issued and service of the applicant was terminated on the ground of plural marriage. It was established that applicant contracted plural marriage with Smt Tara Devi while his first marriage with Smt Anita Chaunan was still in subsistence. Learned counsel for the applicant submitted that Smt Anita Chauhan was not living with the applicant since her marriage, hence the applicant contacted second marriage. In support of his contention, learned counsel for the applicant placed reliance on the judgment passed by Hon'ble Allahabad High Court passed in **Special Appeal No 317 of 1996, Union of India Vs Subedar Deena Nath Tiwari** decided on 09 December 1997 and this Tribunal order passed in **O.A. No 262 of 2012, Rfn Mahesh Singh vs. Union of India**, decided on 24.04.2017. Learned counsel for the applicant submitted that applicant has wrongly been discharged from service and prayed that applicant be re-instated in service.

4. Per contra, learned counsel for the respondents submitted that competent authority had carefully examined the reply to show cause notice based on documentary evidence on record and the

recommendations of the commanders in chain. It clearly established that applicant contracted plural marriage with Smt Tara Devi on 09.03.202010 while his first marriage with Smt Anita Chauhan was in subsistence in contravention to the provisions of Para 333(C) (c) of Regulations for Army 1987 (Revised Edition) read with Section 5 (i) of the Hindu Marriage Act 1955. Accordingly, GOC in C, Central Command, under the provisions of Section 20 (3) Army Act with Army Rule Section 17 & para 333 (C) (c) of Regulations for the Army 1987 (Revised Edition) had passed the reasoned & speaking impugned termination of services order of applicant by way of dismissal with immediate effect. He further submitted that even if the facts stated by the learned counsel for the applicant are taken to be true on its face value, even then the marriage of the applicant with Smt Tara Devi was void marriage. It is an admitted case that no decree of nullity was obtained by the applicant for declaring his marriage with Smt Anita Chauhan null and void. Hence applicant's case has no merits. He admittedly solemnised second marriage during the continuance of a valid marriage. His submission is that a marriage is valid marriage unless it is annulled by a court of competent jurisdiction. On the basis of the admitted facts, the first marriage of the applicant with first wife Smt Anita Chauhan was not dissolved by any competent court of law prior to applicant's second marriage with Smt Tara Devi as such second marriage of applicant has no legal sanctity except to termed as plural

marriage i.e. bigamy, therefore, the second marriage was void as it was solemnised during continuance of valid marriage. As far as allegation of the applicant that Smt Anita Chauhan was pregnant at the time of her marriage is concerned, it requires strict proof from applicant. Learned counsel for the respondents submitted that applicant was dismissed from service on account of plural marriage. The Hon'ble District and Session Judge, Ajmer vide its order dated 17 May 2016 had dissolved the marriage of the applicant with Smt Anita by a decree of divorcé. This order was passed after the service of the applicant was terminated. Learned counsel for the respondents submitted that applicant is not entitled for any relief as claimed in OA and therefore the O.A. is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. Admittedly, the marriage of the applicant with Smt Anita Chauhan was solemnised prior to the marriage of the applicant with Smt Tara Devi and, no decree of nullity of marriage with Smt Anita Chauhan was obtained by the applicant. In view of the arguments raised on behalf of both the parties, the point to be considered is whether the applicant's marriage with Smt Tara Devi was void marriage?

7. We have examined the impugned order. The applicant's services were terminated vide order dated 21 May 2015 passed by the General Officer Commanding-in-Chief, Central Command. This order was passed under Section 20(3) of the Army Act read with Army Rule 17 in terms of Para 333(C)(c) of the Regulations for the Army, 1987. Section 20 of the Army Act and Rule 17 of the Army Rules deals with the powers to terminate or dismiss the services.

8. Clause 333 for the Regulations for the Army deals with the provisions relating to plural marriages. Following the principle of 'Monogamy' as provided in the Special Marriage Act, 1954 and Hindu Marriage Act 1955 and also considering that Christians, Parsis and Jews are also prohibited under the respective personal law for contracting a plural marriage, the principle of Monogamy is adopted in the services. However, in case of Muslims and such other persons to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry during the life of time of his or her wife or husband and sub –para (B) (a) to (h) would apply to such persons only. Sub Para (B) (a) to (h) is quoted herein below :

“(B) Plural Marriage by persons in whose case it is permissible:- (a) No person subject to the Army Act except Gorkha personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government. The circumstances under which such Gorkha personnel can contract a plural marriage are :-

- (i) when the wife suffers from incurable insanity(Madness)*
- (ii) when there is no birth till then years of marriage.*
- (iii) when the wife is paralysed and cannot move.*

- (iv) when the wife becomes blind of both the eyes.
- (v) when the wife is suffering from an infectious incurable sexuality transmitted disease.

(b) 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 :-

- (i) his wife has deserted him and there is sufficient proof of such desertion.
- (ii) his wife has been medically certified as being insane.
- (iii) infidelity of the wife has been proved before a Court of law; and
- (v) any other special circumstances which in the opinion of the brigade or equivalent commander would justify contracting a plural marriage.

(c) Applications will state the law under which the subsisting marriage was solemnized, registered or performed and will include the following details where applicable:

- (i) Whether the previous wife will continue to live with the husband;
- (ii) if the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner ; and
- (iii) name, age and sex of each child by previous marriage and maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all the cases, the applicant will render a certificate to the effect that he is not a Christian, Parshi 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.

(d). 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.

(e) An individual whose marriage is alleged to have been dissolved according to any customary or personal law but not by a judicial decree

will report, immediately after the divorce, the full circumstances leading to and culminating to dissolution of marriage together with a valid proof of the existence of the alleged customs or personal law. The existence and validity of the alleged customs or personal law, if considered necessary will be got verified from civil authorities and if it is confirmed by the civil authorities 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.

(f) An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Headquarters but may be rejected by the GOC-in-C of the Command concerned.

(g) Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in Clause (a) above will be dealt with as under :-

(i) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with the recommendation as to whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual.

(ii) 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 to, recommendations will be signed by the Commanders themselves or be personally approved by them. Also, an opportunity to 'show cause' against the order of termination of service will always be given to the individual concerned.

(h) 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 Clause (a) 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.”

9. Clause 333 (a), (b) and (c) of the Regulations for the Army deals with the action permissible to be taken against a person containing plural marriages upon receipt of a complaint. Clause 333(C) (a), (b) and (c) are extracted below :

“333(C) (a). An individual whose marriage is alleged to have been dissolved according to any recognized custom or special enactment under the provisions of Sec 20(2), read with Sec 3(a) of the Hindu Marriage Act, but not by a judicial decree will report immediately after the divorce, the full circumstances leading to and culminating in dissolutions of marriage together with a valid proof of the existence of the alleged recognized custom or special enactment. The existence and validity of the alleged custom or special enactment will be got verified from civil authorities and if it is confirmed by the civil authorities that the divorce is valid, action will be taken to punish the casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.

333 (C)(b). A plural marriage solemnized, contracted or performed by any such person is null and void and may, on a petition presented to a Court of law by either thereof, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. This offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence of bigamy is prescribed in section 494 and 495 of the Indian Penal Code.

333(C)(c). When it is found, on receipt of an 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 ASS Section 19 read with Army Rule 14 or AA Section 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.”

10. In the instant case applicant joined the army on 08.07.2003. He married to Smt Anita Chauhan on 11.05.2005 but no Part II Order of marriage in this regard was published. He again married to Smt Tara Devi on 09.03.2010 and Part II Order of marriage was published. Applicant solemnised the second marriage without dissolving first marriage with Smt Anita Chauhan. Contention of the applicant that Smt Anita Chauhan was a characterless lady, she left his house within few days of marriage and his marriage with Smt Anita Chauhan was dissolved by paying Rs. 1,0600/- to Smt Anita Chauhan has no substance because a Govt servant cannot contract second marriage until and unless first marriage is dissolved by a court of law.

11. We find from the admitted and pleaded facts that the administrative action taken against the applicant for contracting plural marriage falls within the preview of the above quoted provisions. At the time of passing the impugned order of discharge,

no order of divorce of first marriage was passed by any Court of law.

12. The case laws relied upon by the applicant are different and are not applicable in the instant case. In **O.A. No 262 of 2012, Rfn Mahesh Singh, decided on 24 Apr 2017**, the Tribunal observed that second marriage of the applicant was not established and offence of bigamy was not proved hence it was allowed. In second case law in Special Appeal No 376 of 1996, **Union of India Vs Subedar Deena Nath Tiwari**, decided on 9.12.1997, Hon'ble Allahabad High Court ordered for grant of pay and allowances for the period from termination till reinstatement which is quite different matter. In the case in hand applicant has not been reinstated in service, hence, instant case is not similar to that case.

13. In view of the above discussions, we do not find any lacuna in the procedure adopted by the respondents to terminate the service of the applicant after his plural marriage was found to be proved. In fact, the applicant himself admitted the fact of his plural marriage in the present appeal.

14. We, therefore, we do not find any merit in the application to interfere with the impugned order dated 21.03.2015 passed by the respondent authority in terminating the services of the applicant on the ground of contracting plural marriage in violation the provisions

of Para 333(C) (c) of the Army Regulations. Consequently, the application being devoid of merit is liable to be dismissed.

15. Accordingly, Original Application is **dismissed**.

16. No order as to cost.

17. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: 02 September, 2021

Ukt/-