

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 03 of 2017****Monday, this the 06<sup>th</sup> day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ram Bahadur Pal, son of Ram Lakhan Pal, resident of Village-Gulab Ka Purwa, Post-Ranki, District-Pratapgarh.

.... Applicant

Ld. Counsel for the: **Shri Virat Anand Singh**, Advocate.  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Air Force Headquarters, New Delhi.
3. Air Officer Commanding-in-Chief, South Western Air Command, Indian Air Force, HQ SWAC, IAF, Sector-9, Gandhinagar-382009.
4. Smt. Anita Pal daughter of Ram Kummat Pal wife of Ram Bahadur Pal, resident of Village-Gadariyanpurwa, Post-Sujwarya, District-Raibareilly.

... Respondents

Ld. Counsel for the: **Dr. Chet Narain Singh**, Advocate  
Respondents. Govt Standing Counsel for Respondent No. 1 to 3.  
**Shri Shailendra Kumar Singh**, Advocate  
Learned Counsel for Respondent No. 4.

**ORDER (Oral)**

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

*(a) The Hon'ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the order dated 22.07.2015 contained in Annexure No A-1 to this O.A.*

*(b) The Hon'ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the order dated 06.02.2015 contained in Annexure No A-2 to this O.A. imposing the punishment of removal from service on the applicant.*

*(c) The Hon'ble Tribunal may kindly be pleased to issue an order or direction commanding upon the respondents to reinstate the applicant back in service with all consequential benefits.*

*(d) The Hon'ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper under the facts and circumstances of the case.*

*(e) The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.*

2. Brief facts of the case are that applicant was enrolled in the Indian Air Force as Non Combatant (Enrolled) [NC (E)] on 22.07.2000. Prior to joining service he was married to Ms Anita Pal on 02.02.1996. As per service record he was blessed with two sons out of whom one expired on 06.06.2008. Later a daughter was born on 19.09.2005. On 19.09.2013 Smt Anita Pal submitted a written complaint to unit alleging that her husband solemnized plural marriage and a female child was born to that wedlock. On receipt of complaint, a Show Cause Notice (SCN) dated 04.10.2013 was issued to applicant. In reply to Show

Cause Notice he blamed Smt Anital Pal of having illicit relations but accepted that he had contracted second marriage in the year 2010 with Ms Archana Pal. A Court of Inquiry was held and during investigation applicant produced a customary divorce certificate dated 20.05.2009 which was not accepted and applicant was found guilty of contracting plural marriage. Thereafter, a Show Cause Notice dated 20.11.2014 was issued by Headquarters South Western Air Command calling upon him to show cause as to why he should not be dismissed/removed from service under Section 20 (3) of Air Force Act, 1950 read with Rule 18 of Air Force Rules, 1969 for being found blameworthy of contracting plural marriage. In reply to Show Cause Notice applicant failed to submit divorce decree by any court annulling his marriage with his first wife Smt Anita Pal. Accordingly, vide order dated 06.02.2015 he was dismissed from service w.e.f. 04.03.2015 (Struck off Strength on 05.03.2015). This O.A. has been filed for re-instatement of applicant in service by quashing order dated 06.02.2015 and 22.07.2015.

3. Learned counsel for the applicant submitted that on account of his wife Anita Pal having illicit relations with Brijpal of same unit, applicant had strained relations with her. They were separated from each other by mutually consented customary divorce dated 20.05.2009. His further submission is that after getting divorce from his first wife applicant contracted second marriage with Archana Pal in the year 2010, therefore, there is no illegality in contracting second marriage. Relying upon Hon'ble Supreme Court judgment in the case of **Smt Priya Bala Ghosh vs Suresh Chandra Ghosh**, reported in AIR 1971 SC 1153, **Bhaurao vs State of Maharashtra**, AIR 1965 SC 1564 and **Yamunaji**

***H Jadhav vs Nirmala***, (2002) 2 SCC 637, learned counsel for the applicant contended that applicant may not be held guilty for contracting plural marriage on the ground that he had already separated from his first wife in accordance with customary divorce. He pleaded that applicant be re-instated into service.

4. Per Contra, learned counsel for the respondents submitted that on receipt of a complaint from Smt Anita Pal (applicant's legally wedded wife), a Court of Inquiry was held which found applicant guilty of plural marriage. His further submission is that findings of Court of Inquiry and recommendations were forwarded to competent authority i.e. South Western Air Command. On receipt of proceedings of Court of Inquiry, the competent authority issued Show Cause Notice dated 20.11.2014 to applicant calling upon him to show cause as to why he should not be dismissed from service under Section 20 (3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969 for contracting plural marriage. In response to Show Cause Notice applicant could not produce decree of divorce from any court and accordingly, his discharge was issued vide order dated 06.02.2015. Further submission of learned counsel for the respondents is that applicant was removed from service in accordance with Air Force Regulations and no injustice has been done in discharging him from service. He pleaded for dismissal of O.A.

5. While filing counter affidavit on behalf of respondent No. 4, Shri Shailendra Kumar Singh, learned counsel has submitted that Anita Pal is an illiterate lady and applicant had got her signature fraudulently on an affidavit on account of purchasing a plot at Kanpur. He further

submitted that later she came to know that the affidavit was meant for Divorce Deed. Rebutting submissions made by learned counsel for the applicant in para 4 (VII), learned counsel for the respondent No. 4 submitted that applicant had levelled false allegations with regard to her integrity. His further submission is that Anita Pal had filed case No. 61 of 2015 against applicant before the Principal Judge, Family Court Raibareilly on the advice of Headquarters South Western Air Command vide letter dated 12.02.2014. Nothing has been brought on record to show outcome of aforesaid case.

6. Heard learned counsel for the parties and perused the material placed on record.

7. The crux of the case is that applicant is alleged to have contracted plural marriage. We have to decide whether the discharge on the ground of plural marriage is in order as per rules. Written statement has been filed by the respondents and it is stated that the petitioner was enrolled as NC (E) in the Indian Air on 27.07.2000. He married Anita Pal daughter of Shri Ram Kummat Pal on 02.02.1996 prior to joining service as per Hindu rites. The couple allegedly entered into customary divorce deed in the presence of village Panchayat on 01.03.2009 (registered on 01.03.2014) which lacked legality in the eyes of law. The applicant was legally bound to report this occurrence, with reference to his marriage, for inclusion in the service documents which he failed to do. The applicant thereafter, married Archana Pal on 02.06.2010. The fact of plural marriage came to notice when Smt. Anita Pal (first wife) submitted an application dated nil which was received by respondents on 19.09.2013, claiming herself to be the legally wedded wife of the

applicant (Annexure-A). On receipt of aforesaid application, a C of I was ordered in which applicant accepted contracting plural marriage after customary divorce. Thereafter, the case was referred to competent authority which issued Show Cause Notice dated 20.11.2014 and on receipt of reply, applicant was discharged from service w.e.f. 04.03.2015 (SOS w.e.f. 05.03.2015). The applicant had also not produced anything to show the alleged recognized custom of dissolution of marriage in their community. In this regard it may be noted that degree of divorce could only be passed by the court of law. The case was thereafter, processed to Air Officer Commanding in Chief, South Western Air Command who issued Show Cause Notice dated 20.11.2014 (Annexure No. 4) which for convenience sake is reproduced as under:-

*“1. WHEREAS, you were enrolled in the Indian Air Force (IAF) on 27 July 2000, and assigned the trade of Cook and presently held on the posted strength of 119 Helicopter Unit, Air Force, with effect from 30 April 2012.*

*2. AND WHEREAS, you were legally married to Ms Anita Pal on 02 February 1996 as per Hindu Rites, before your enrolment in IAF. As per service records held at Unit, you also have two children born out of the wedlock with her.*

*3. AND WHEREAS, consequent to the differences with your wife Ms Anita Pal you both mutually executed a Talaknama on 20 May 2009 attested by a Notary in Kanpur Court, the fact which was earlier denied by your wife.*

*4. AND WHEREAS, you married Ms Archana Pal on 02 June 2010 and a girl child was born out of the wedlock with her. Further you have submitted a certificate of marriage with her issued by Gram Pradhan ‘Gram Panchayat’-Jamethi, Nyay Dist-Pratapgarh in the C of I.*

*5. AND WHEREAS, on a complaint received from Ms Anita Pal on 19 September 2013 alleging contracting of plural marriage with Ms Archana Pal and domestic violence against her, a Court of Inquiry (C of I) was held at 119 HU, AF on 21 October 2013 and subsequent days to investigate into the same in which you have been blamed on the following counts:-*

*(i) Not applying for the POR of Divorce after signing Talaknama on mutual agreement.*

(ii) Not seeking permission from IAF authorities to marry Smt Archana Pal (second Wife).

(iii) Concealing the fact of second marriage to IAF authorities.

(iv) Contracting 'plural marriage' by marrying Smt Archana Pal on 02 Jun 2010 without divorcing Smt Anita Pal whom you married under Hindu rites on 02 Feb 1996.

6. AND WHEREAS, the fact brought out in your defence in the C of I that your marriage with Ms Archana Pal was with the consent of Ms Anita Pal and that considering Talaknama executed on 20 May 2009 a valid and registered document you contracted marriage with Ms Archana Pal are wholly untenable under law. Further, the Deed of Divorce from Ms Anita Pal purported to be executed on 01 March 2014 before Sub Registrar, Jamnagar produced in your defence in the C of I has been executed stating false averments about existence of custom of dissolving of marriage and is wholly illegal. Moreover you even failed to produce any certificate about existence of any such custom as per Indian Evidence Act and in accordance with Sec 29 of the Hindu Marriage Act, 1955 before the C of I.

7. AND WHEREAS, the evidence on record in the C of I proceedings establishes that you were legally married to Ms Anita Pal on 02 February 1996 and without obtaining divorce from her from the competent court of law, contracted marriage with Ms Archana Pal on 02 June 2010 which is void under the Hindu Marriage Act, 1955.

8. AND WHEREAS, it is apparent that at the time of your marriage with Ms Archana Pal on 02 June 2010, your first marriage with Ms Anita Pal was in existence and that you have also not denied the factum of your marriage with both of them.

9. AND WHEREAS, contracting of plural marriage by a person subject to Air Force law is prohibited under para 578 (c) of Regulations for the Air Force, 1964.

10. AND WHEREAS, the AOC-in-C, SWAC, IAF after duly considering the entire facts and circumstances of the case brought out in the Court of Inquiry proceedings, findings of the Court and the legal position is of the opinion that you have contracted plural marriage with Ms Archana Pal without obtaining divorce from Ms Anita Pal from the competent court of law.

11. NOW THEREFORE, the AOC-in-C, SWAC, IAF has directed that you are to show cause as to why you should not be dismissed/removed from service under Section 20 (3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969 for being found blameworthy for contracting plural marriage. Your reply to this show cause notice (SCN) is to be submitted by you to your Commanding Officer within 10 days of the receipt of this Show Cause Notice failing which it shall be assumed that you have nothing to urge in your defence against your dismissal/removal from the service and further action would be taken accordingly.

12. For the purpose of preparation of your reply to this SCN, if you wish, you may peruse the copy of C of I proceedings held with the Adjutant of 119 HU, AF during stn working hrs."

8. Thereafter, on receipt of reply from applicant and taking into account the circumstances of the case, the discharge/removal of applicant was passed by competent authority vide order dated 06.02.2015 with directions to discharge applicant w.e.f. 04.03.2015. For convenience sake the aforesaid order is reproduced as under:-

*"1. WHEREAS, you were enrolled in the Indian Air Force (IAF) on 27 July 2000, and assigned the trade of Cook and presently held on the posted strength of 119 Helicopter Unit, Air Force, with effect from 30 April 2012.*

*2. AND WHEREAS, you were legally married to Ms Anita Pal on 02 February 1996 as per Hindu Rites, before your enrolment in IAF.*

*3. AND WHEREAS, consequent to the differences with your wife Ms Anita Pal you both mutually executed a Talaknama on 20 May 2009 attested by a Notary in Kanpur Court.*

*4. AND WHEREAS, you married Ms Archana Pal on 02 June 2010 and have submitted a certificate of marriage with her issued by Gram Pradhan, Gram Panchayat-Jamethi Nyay, Distt-Pratapgarh in the C of I.*

*5. AND WHEREAS, on a complaint received from Ms Anita Pal on 19 September, 2013 alleging contracting of plural marriage with Ms Archana Pal, a Court of Inquiry (C of I) was held at 119 Helicopter Unit, Air Force on 21 October 2013 and subsequent days to investigate into the same in which you have been blamed on the following counts:-*

*(i) Not applying for the POR of Divorce after signing Talaknama on mutual agreement.*

*(ii) Not seeking permission from IAF authorities to marry Smt Archana Pal (second Wife).*

*(iii) Concealing the fact of second marriage to IAF authorities.*

*(iv) Contracting 'plural marriage' by marrying Smt Archana Pal on 02 Jun 2010 without divorcing Smt Anita Pal whom you married under Hindu rites on 02 Feb 1996.*

*6. AND WHEREAS, consequent to which a Show Cause Notice (SCN) bearing reference No SWAC/C 3436/47/P1 dated 20 November 2014 was served upon you on 03 December 2014 urging you to submit your reply in your defence against the allegations made.*

*7. AND WHEREAS, you have submitted a reply dated 10 December 2014, to the said SCN wherein you have mainly brought out the following and made a request for retaining you in service:-*

*(i) That you were married with Ms Anita Pal before joining the Air Force and due to ignorance of official procedures you did not consider it necessary to apply for the POR of divorce after signing Talaknama with Ms Anita Pal.*

(ii) That you missed out on seeking permission from IAF authorities to marry Ms Archana Pal (second wife) due to oversight.

(iii) That you were reluctant in bringing out news of your divorce with Ms Anita Pal (first wife) and second marriage with Ms Archana Pal due to fear of social boycott and there was no other malafide intentions.

(iv) That after few years of your marriage with Ms Anita Pal fissures surfaced in your relationship and things worsened further as your wife got involved in extra marital affair. Due to which you decided to part ways with the consent of your parents and other elders of the village and signed affidavit (Talaknama) to this effect on 20 May 2009 at Kanpur court and also paid Rs 50,000/- and returned all belongings to her.

(v) That due to provocation by some villagers, Ms Anita Pal lodged a complaint with AFWWA with false allegation which she later agreed in her statement in front of the C of I.

(vi) That you solemnized second marriage with Ms Archana Pal so that your children and parents can be taken care of.

(vii) That dismissal from service will render your three children and old parents starving and will affect the education of your children adversely.

(viii) That you are aware of the mistakes committed by you due to ignorance of law and you and Ms Anita Pal have commenced the divorce formalities at Jamnagar court of which Ms Anita Pal has no objection.

8. AND WHEREAS, your said reply along with the copy of an affidavit dated 08 Dec 14 by Shri Rakesh Bahadur Singh Ex Gram Pradhan, Narwal forwarded vide letter No 119 HU/C 207/1/66/P1 dated 20 Jan 15 as a supplement of your reply has been duly considered and found to be untenable in the light of the following acts revealed in the Court of Inquiry.

(i) That Talaknama executed mutually on 20 May 209 attested by a Notary in Kanpur Court with regard to dissolving of the marriage with Ms Anita Pal is not legal and valid. Further, the Deed of Divorce from Ms Anita Pal purported to be executed on 01 March 2014 before Sub Registrar, Jamnagar produced in your defence in the C of I has been executed stating false averments about existence of custom of dissolving of marriage and is wholly illegal. Moreover, you even failed to produce any certificate about existence of any such custom as per Indian Evidence Act and in accordance with Section 29 of the Hindu Marriage Act, 1955, before the C of I

(ii) That the evidence on record in the C of I establishes that you were legally married to Ms Anita Pal on 02 February 1996 and without obtaining divorce from her from the competent court of law contracted plural marriage with Ms Archana Pal on 02 June 2010 which is void under the Hindu Marriage Act, 1955.

(iii) That with respect to allegation of extra marital affair of your first wife Ms Anita with NC (E) Brijpal Valmiki the evidence on record in the C of I proceedings it is revealed that the said NC (E)

*has been examined as witness No 5 in the ibid C of I and said allegation have not been substantiated in the C of I.*

9. *AND WHEREAS, it is clearly established beyond reasonable doubt that at the time of your marriage with Ms Archana Pal on 02 June 1010, your first marriage with Ms Anita Pal was in existence and that you have also not denied the factum of your marriage with both of them. Hence, you have contracted plural marriage with Ms Archana Pal without obtaining divorce from Ms Anita Pal from the competent court of law.*

10. *AND WHEREAS, contracting of plural marriage by a person subject to air force law is prohibited under para 578 (c) of Regulations for the Air Force, 1964.*

11. *AND WHEREAS, after duly considering your reply to the SCN vis-a-vis the evidence on record in the Court of Inquiry, in my considered view none of the contentions submitted in defence inspire confidence or absolve you of your culpability of contracting plural marriage in contravention of para 578 (c) of Regulations for the Air Force, 1964. The said misconduct is not only in contravention of social norms but a detrimental and prejudicial to both community living in the AIF as well as good order and Air Force discipline.*

12. *AND WHEREAS, I being the Competent Authority in this case, having considered entire facts and circumstances of the case, am of the opinion that you are a poor NC (E) material and your further retention in the AIF is undesirable.*

13. *NOW THEREFORE, in exercise of the powers vested in me under Section 20 (3) of Air Force Act, 1950 read with Rule 18 of Air Force Rules, 1969, I hereby order your removal from the service which shall take effect in accordance with Rule 12 of the Air Force Rules, 1969."*

9. The applicant submitted an appeal dated 21.04.2015 (Annexure-13) against order dated 06.02.2015 which was rejected vide order dated 22.07.2015 (pp 15 of O.A.).

10. The Regulations for the Air Force, 1964 have been framed under the authority of the Air Force Act, 1950. Regulation 578 (c) relating to plural marriage reads as under:-

*"578. Plural Marriage by persons in whose case it is prohibited by law:-*

*(a) Hindus, Buddhists, Jains and Sikhs and also other persons who are governed by Hindu Law are forbidden under the Hindu Marriage Act, 1955 to contract another marriage if either of the party has a living spouse.*

*(b) Christians, Parsis and Jews are also forbidden under their respective personal laws to contract another marriage if either of the party has a living spouse.*

*(c) A marriage cannot legally be Performed or registered under the Special Marriage Act, 1954, if either of the party has a living spouse.*

*(d) Any plural marriage contracted by persons specified in sub paras (a), (b) and (c) above or performed or registered under the Special Marriage Act. 1954 is illegal. Such marriage does not bestow on the parties the status of husband and wife nor do the parties acquire any rights against one another. The children from such marriage will be illegitimate. An individual contracting such plural marriage will be liable to punishment under either section 494, I.P.C., i.e., marrying again during life time of husband or wife, or/and section 495, I.P.C. i.e., concealment of former marriage from a person with whom subsequent marriage is contracted.*

*(e) An application from an individual to contract such plural marriage will not be entertained, nor can ex-post-facto sanction be given to such plural marriage.*

*(f) When it is found that any person in whose case it is prohibited by law has contracted plural marriage, no disciplinary actions by way of his trial by court martial or under Section 82 or 86 of the Air Force Act, will be taken but only administrative action to terminate his service under Section 19 or 20 of the Air Force Act will be taken.*

*(g) When a case of plural marriage has been brought before a criminal or civil court, the commanding officer will not initiate, administrative action till after the matter has been finally disposed of by the court. When a person is charged for contracting plural marriage before a criminal court, he will not be claimed for trial by court-martial. Such person will inform his commanding officer immediately a complaint is made against him in a court of law, and the commanding officer will then report the case to Air Headquarters (Directorate of Personal Services) through normal channel.*

*(h) When a person has been convicted under section 494 or 495 of the Indian Penal Code, or his plural marriage has been dissolved, he will inform his commanding officer of his conviction and punishment or of the dissolution of plural marriage, and the commanding officer will then report the matter to Air Headquarters (Directorate of Personal Services) through normal channel. Thereafter the commanding officer will initiate administrative action to terminate his service under section 19 or 20 of the Air Force Act.*

*(j) The failure on the part of a person to notify his officer of the filing of a suit or a complaint against him in at court for contracting plural marriage or of his conviction under section 494 or/ and section 495 of the Indian Penal code or of the dissolution of his plural marriage will render him liable to be proceeded against under section 42(e) of the Air Force Act. (k) All cases where administrative action is required to be taken will be initiated by the commanding officer and submitted through channel to Air Headquarters (Directorate of Personal Services)."*

11. From the above it is clear that the applicant being a Hindu was governed by the Hindu Marriage Act, 1955 and no customary law was

applicable to him. He had also failed to report the alleged dissolution of his first marriage according to any claimed customary or personal law and the full circumstances leading to and culminating in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law.

12. On having contracted plural marriage, and the matter coming to the notice of the authorities, the case was processed in accordance with the Regulations and the Air Officer Commanding in Chief, Western Air Command had decided to take administrative action for termination of his services in accordance with the Regulations. The directions of the Air Officer Commanding in Chief, South Western Air Command with regard to removal of applicant were conveyed as reproduced in para 7 above.

13. The applicant had replied to the Show Cause Notice (Annexure-4) and as there was nothing to justify his having contracted plural marriage, he was ordered to be discharged by the competent authority in terms of Rule 13 (3) III (v).

14. From the foregoing it is apparent that the authority competent to decide the action to be taken in such cases was the Air Officer Commanding in Chief, Western Air Command who had directed that the applicant be discharged from service. The petitioner was issued a Show Cause Notice by the competent authority before ordering his discharge.

15. In the facts and circumstances of the case the applicant was clearly guilty of contracting plural marriage and was liable to be discharged from service under the Air Force Regulations. We find no prejudice or illegality caused to the applicant.

16. Coming to citations relied upon by learned counsel for the applicant in the case of ***Smt Priya Bala Ghosh vs Suresh Chandra Ghosh***, reported in AIR 1971 SC 1153, we observe that in this case respondent was not held guilty as he solemnised second marriage which was not proved and the ceremony was not performed according to Hindu Rites. In the case of ***Bhaurao Shankar vs State of Maharashtra***, AIR 1965 SC 1564, their Lordships of the Hon'ble Apex Court held that second marriage was void being not solemnized as per customs and traditions of Hindu Marriage Act. The case relating to ***Yamunaji H Jadhav vs Nirmala***, (2002) 2 SCC 637 is on different facts and circumstances as it was related to an affidavit of divorce being signed under coercion.

17. Under the facts and circumstances we find no illegality in the discharge of the applicant on contracting plural marriage. The O.A. is accordingly **dismissed**.

18. No order as to costs.

19. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) Member (A)	(Justice Umesh Chandra Srivastava) Member (J)
Dated : 06.09.2021	
Rathore	