

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 84 of 2016

Wednesday, this the 1st day of September, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Devendra Singh Kushwaha (Posted as Naik) No. 1481359H,
801 Engineer Regiment Refineries & Pipeline
(Territorial Army) Agra Fort, Agra-282001

.....Petitioner

Ld. Counsel for the Petitioner : **Shri Nishant Verma**, Advocate.

Versus

1. General officer, command-In-Chief, Central Command, Lucknow.
2. Commanding Officer, 801, Engineer Regiment Refineries & Pipeline (Territorial Army) Agra Fort, Agra-282001.
3. Union of India, through Secretary, Defence Department, New Delhi.

.....**Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Govt Standing Counsel

ORDER

1. The petitioner, being dismissed from the Army on the ground of plural marriage, preferred Civil Misc. Writ Petition No. 13012 of 2001 before the Hon'ble High Court of Judicature at Allahabad, which has been transferred to this Tribunal and has been registered as T.A. No. 84 of 2016. By means of this T.A. petitioner has prayed for the following :-

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 12.03.2001 and 02.02.2001 (Annexure Nos. 3 and 6 respectively) passed by respondent Nos. 2 and 3.

ii) Issue any other writ, order or direction in favour of the petitioner which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iii) To award the cost of the petition in favour of the petitioner.”

2. Brief facts, as borne out from the Transferred Application is that the petitioner was appointed as a 'SAINIK' on 09.04.1987 and was promoted to the rank of Naik in October, 1995. On the basis of complaint to respondent No. 2 alleging that petitioner has contracted and solemnized second marriage, a Show Cause Notice dated 22.03.2000 was issued to the petitioner by respondent No. 1 to find out the correctness of allegations. The petitioner replied the Show Cause Notice on 30.04.2000. The petitioner accepted solemnisation of plural marriage before the Notary Magistrate Azamgarh (UP) on 07.04.1999 and therefore, the services of the petitioner has been terminated vide order dated 12.03.2001 under the provisions of Para 333 (C) (c) of Regulations of the Army Act, 1987. Being aggrieved with the punishment of dismissal, the petitioner has filed this T.A. to quash his termination order.

3. Submission of learned counsel for the petitioner is that the services of the petitioner has been terminated vide order dated 12.03.2001 in an arbitrary and excessive manner. The termination

order is wholly illegal, arbitrary, unwarranted and against the provision of law. The marriage has not been proved and the notary affidavit regarding the marriage has no sanctity in the eyes of law and cannot be termed as a legal and valid marriage, as such, in these circumstances provisions of para 333 (C) (c) of Regulations of the Army Act, 1987 does not apply in the facts and circumstances of the case and in these circumstances, the impugned order passed by respondents is wholly illegal without jurisdiction and liable to be quashed. Apart from it, the petitioner has specifically submitted in his reply that the lady which was residing with him for some time, has now gone to her parents' house and in fact, separation has taken place between him and at present he has no concern with her and as such, the provisions of Para 333 of Regulation for the Army (Revised Edition 1987) under Army Act 1950, Section 19 read with Rule 14 of 1954 does not apply being no legal marriage according to the provisions of Hindu Marriage Act, 1955 and therefore, the impugned order is wholly illegal, and cannot be legally sustained. There is no valid proof of marriage of the petitioner with so-called Miss Rohini Devi as such, Para 333 of Regulation does not apply on him and pleaded to quash termination order of the petitioner.

4. Learned counsel for the petitioner also placed reliance in judgments of the Hon'ble Supreme Court in ***Kanwal Ram and Ors vs. The Himanchal Pradesh Admn*** in Criminal Appeal No. 167 of 1963, decided on 19.08.1965, AFT (RB) Lucknow in O.A. No. 21 of

2013, **Hav/Clk Pramod Kumar Singh vs. Union of India & Ors**, decided on 23.01.2017 and OA No. 262 of 2012, **Rfn Mahesh Singh @ Shyam vs. Union of India & Ors**, decided on 24.04.2017 and pleaded to quash termination order of the petitioner.

4. Per contra, submission of learned counsel for the respondents is that on arrival of the petitioner in his new unit i.e. 801 Engineer Regiment on 05.05.1999, he was interviewed by the Commanding Officer wherein he stated that his wife Smt Anita Devi stayed at his native place with two children, hence he requested/applied for outliving permission on CILQ and accordingly, on 29.05.1999 he was permitted to stay with his family. Later on the petitioner vacated the CILQ accommodation on 31.12.1999. A letter received on 10.07.1999 from JWO B. Singh of Air Force Station, New Delhi that Nk Devendra Singh Kushwah (Petitioner) married to Miss Rohini Devi alias Jyoti, D/o JWO B. Singh while he was posted in GE 866 EWS (Andaman Nikobar). On checking of his outliving accommodation, it came to notice that the petitioner was staying with Miss Rohini Devi alias Jyoti in the CILQ accommodation and his legally wedded wife and children were not staying with him. Then BEG Centre and Records was informed on 17.07.1999 about the plural marriage performed by the petitioner. The BEG Records advised to investigate the matter to find out the facts. A Show Cause Notice was issued by Commanding Officer of the unit to the petitioner on 11.10.1999.

On 18.10.1999, the petitioner replied that he had solemnised second marriage with Miss Rohini Devi in front of Notary Magistrate Azamgarh (UP) on 07.04.1999. An affidavit was submitted by the petitioner in this regard which is on record which states that he was married to Miss Rohini Devi on 07.04.1999. The matter was accordingly reported to GOC-in-C, Central Command, Lucknow and accordingly, a Show Cause Notice was also served to the petitioner by GOC-in-C, Central Command on 31.03.2000. The matter was also investigated through District Sainik Welfare Office, Bhind vide letter dated 11.05.2000. In reply to the Show Cause Notice submitted by the petitioner on 10.05.2000 he had admitted on contracting plural marriage with relevant proof of affidavit filed before the Notary Magistrate, Azamgarh (UP) on 07.04.1999. Accordingly, as per direction of GOC-in-C Central Command letter dated 02.02.2001, the petitioner was terminated from Army service on 13.03.2001. He pleaded for dismissal of T.A.

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

6. From the pleadings on record we find that during course of Army service, the petitioner solemnized marriage with Miss Anita Devi (first wife) as per Hindu Rites and a Part II Order to this effect has also been published and later contracted second marriage with Miss Rohini Devi alias Jyoti on 07.04.1999 in violation of Para 333 of Regulation for the Army (Revised Edition 1987) under Army Act

1950, Section 19 read with Rule 14 of 1954 and without obtaining decree of divorce from his first wife.

7. The Defence Services Regulations are framed under the authority of Section 19 of the Army Act, 1950. Regulation 333 relating to plural marriage reads as under :-

*“333. **Plural Marriages.**- (A) The Special Marriage Act 1954 and Hindu Marriage Act 1955 lay down the rule of ‘Monogamy’ that is, neither party has a souse living at the time of marriage. These Acts also provide for decrees of nullity of marriage, restitution of conjugal rights, judicial separation and divorce and also orders for alimony, and custody of children. The Hindu Marriage Act applies to all Hindus, Budhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Paris or Jews by religion. Christians, Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage. Thus no person who has solemnized or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act 1955 applies, can now remarry during the life time of his or her, wife or husband. Sub-para (C) (a) to (c) below apply to such persons only. A Muslim or such other person to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry can marry during the life time of his or her, wife or husband and sub-para (B) (a) to (h) below apply to such persons only.*

(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 ten 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 sexually 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

(iv) 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 petitioner 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.

(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 in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law. The existence and validity of the alleged custom 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 therefore 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 recommendations 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 too 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.

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

(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 dissolution 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 publish the casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.

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

*(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.”*

8. The case laws relied upon by the petitioner in Para 4 above, do not apply in the present case being based on different facts and circumstances :

(a) **Kanwal Ram and Ors** (supra) – In this case, it was not proved a case of bigamy, hence, appeal was allowed in favour of appellants.

(b) **Pramod Kumar Singh** (supra) - In this case, order of dismissal from service on account of plural marriage was illegal as there was no proof of second marriage produced by the respondents, hence, O.A. was allowed in favour of the petitioner.

(c) **Rfn Mahesh Singh @ Shyam** (supra) - In this case, order of dismissal from service on account of plural marriage was illegal as there was no proof of second marriage produced by the respondents, hence, O.A. was allowed in favour of the petitioner.

9. With aforesaid discussion/observation, it is clarified that impugned termination order passed by General Officer

Commanding-in-Chief, Central Command is legal and as per Rules & Regulations of the Army. Petitioner's marriage with Miss Rohini Devi alias Jyoti (second wife) has been proved which has been admitted by petitioner himself as per affidavit filed before the Notary Magistrate, Azamgarh (UP) on 07.04.1999. Submission of petitioner that lady (second wife) which was residing with him for some time has now gone to her parents' house and separation has taken place has now no relevance with the case as second marriage with Miss Rohini Devi has been proved by affidavit filed by petitioner before the Notary Magistrate, Azamgarh (UP) on 07.04.1999. The provisions of Para 333 of Regulations for the Army completely apply on him and his dismissal on account of plural marriage is as per Rules & Regulations, hence, termination order issued by General Officer Commanding-in-Chief, Central Command is legal and not violative of Articles 14 and 21 of the Constitution of India. Therefore, all pleas taken by the petitioner in O.A. to quash his termination order are hereby rejected.

10. In substance, it is clear that the petitioner contracted plural marriage with Rohini Devi alias Jyoti (second wife) on 07.04.1999 without obtaining decree of divorce from his first wife Smt Anita Devi which is utter violation of Para 333 (C) (c) of Regulations for the Army, 1987 (Revised Edition). Unless and until there is a decree of divorce/cancellation of first marriage, the second marriage being void, no relief to quash his termination order can be granted to the petitioner.

11. In view of the above and the fact that the petitioner contracted plural marriage which is not permissible under Army Regulation (supra) and provisions of Hindu Marriage Act, we find no merit in the present T.A. and the same is accordingly **dismissed.**

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 1st September, 2021
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