

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 583 of 2017

Tuesday, this the 29th day of January, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Ex. No. 3007510 M Ex Sep Ajay Kumar Singh
of 14 RAJPUT

Son of Shri Sachchidanand Singh

Resident of Village – Pipara Dawan

P.O. – Lal Road, Tehsil – Salempur

P.S. Mail, District – Deoria – 274505 (UP)

..... Applicant

Ld. Counsel for the Applicant : **Col Rakesh Johri (Retd) &
Shri Bhanu Pratap Singh Chauhan,**
Advocate

Versus

1. Union of India through The Secretary,
Ministry of Defence, New Delhi.
2. Chief of the Army Staff,
IHQs of the Ministry of Defence,
South Block, New Delhi – 110001.
3. General Officer Commanding-in-Chief,
HQs Eastern Command, Fort William, Kolkata – 700021.
4. Officer-in-Charge,
Records The Rajput Regiment,
PIN – 900427, C/o 56 APO
5. Commanding Officer,
14 RAJPUT, C/o 56 APO

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, 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) *Issue/pass an order or a direction to the Respondents to set aside/quash the discharge order and movement order dated 22.11.2011 and 19.01.2012 (Annexure A-1 (i), (ii) and (iii)).*
- “(b) *Issue/pass an order or a direction to the respondents to reinstate the applicant in service forthwith.*
- “(c) *Issue/pass an order or a direction to the respondents to grant him all consequential benefits.*
- “(d) *Issue/pass any other order or direction as this Honourable Tribunal may deem fit in the circumstances of the case.*
- “(e) *Allow this application with cost.”*

2. Before proceeding further, we would like to reproduce the impugned orders dated 22.11.2011 and 19.01.2012 passed by the respondents, which are as under :

Order dated 22.11.2011:

“DIRECTIONS OF GENERAL OFFICER COMMANDING-IN-CHIEF, EASTERN COMMAND ON THE PLURAL MARRIAGE CASE OF NUMBER 3007510M SEP AJAY KUMAR SINGH OF 14 RAJPUT

1. *The case of Number 3007510M Sepoy Ajay Kumar Singh of 14 RAJPUT has been examined in detail in the light of relevant documents placed on record.*

2. *it is clearly established from the material on record that the individual has contracted plural marriage with Miss Nisha Singh on 15 Jul 08 during the subsistence of his first marriage with Smt Poonam Singh in violation of the provisions of Para 333 (C)(c) of the Regulations for the Army 1987 (Revised Edition) – The denial by the individual does not inspire confidence and is against the weight of evidence.*

3. *In view of the above, the service of individual is liable to be terminated under Army Act Sec 20 read with Army Rule 17. However, keeping in view the adverse effect on his family and purely on humanitarian ground, I direct that Number 3007510M Sepoy Ajay Kumar Singh of 14 RAJPUT be discharged from the service in terms of Army Rule 13 as amplified vide ADG (DV) IHQ of MoD (Army) letter No. 79333/AG/DV 1 (P) dt 12 Dec 2003.*

Sd/- x x x x x x

Lieutenant General

Dated : 22 Nov 2011

General Officer Commanding -in-Chief

Order dated 19.01.2012:

14 RAJPUT
PIN – 912114
c/o 99 APO

C/3007510/A

19 Jan 12

3007510M Sep Ajay Kumar Singh
D Coy
14 RAJPUT
PIN 912114
c/o 99 APO

DISCHARGE FROM ARMY SERVICE UNDER AR 13

As per directions of GOC-in-C, Eastern Comd order dt 22 Nov 11 (photocopy attached) you are hereby discharged from Army service with effect from 20 Jan 12 (AN).

Sd/- x x x x xx x

Enclosure : As above
Copy to :-

Records The Rajput Regiment
PIN – 900427
c/o 56 APO

- 1. Ref your letter No 3007510/SR/14R/
DOC-III/dt 15 Dec 11.

2. It is intimated that No 3007510M
Sep Ajay Kumar unit has been disch from
service wef 20 Jan 12 (AN).

HQ 117 Inf Bde (A)
PIN – 908117
c/o 99 APO

- for info pl.

Received By

Signature Sd/- x x x x x x x
(3007510M Sep Ajay Kumar Singh)
Dated : 19 Jan 12”

3. In brief, the facts of the case are that the applicant was enrolled in the Army 19.03.2004. On 16.02.2007, the applicant married Poonam Singh as her Hindu rites and he obtained a certificate of his marriage with Poonam Singh from Gram Pradhan of the relevant village. In the year 2008, a Civil Suit bearing no.1363 of 2008 was filed by one Smt. Nisha Singh against the applicant under Section 9 of Hindu Marriage Act for restitution of conjugal rights in the Family Court at Kanpur. On 07.05.2009, the applicant got his marriage registered with the Registrar of Marriage, Kanpur City which was numbered as 144 of 2009 and communicated this fact to the Commanding Officer vide his letter dated 01.04.2010. An entry in the service record was

made and Part II Order was published and name of Smt. Poonam Singh was endorsed in the relevant service record of the applicant.

4. In the year 2010, Smt Nisha Singh filed a case in the Court of ACMM I, Kanpur Nagar under Section 12 of the Protection of women From Domestic Violence Act, 2005. The said application was decided exparte by the Magistrate. Smt Nisha Singh sent a complaint in the Unit, on the basis of the which, a letter was initiated and addressed to the Superintendent of Police, Deoria, whereby a report of plural marriage was sent. On the basis of the same, a show cause notice was sent to the applicant, which was duly replied by the applicant, wherein the applicant has denied that he has ever married Smt Nisha Singh and has never stayed with her at any point of time and other allegations made by Smt Nisha Singh are false.

(7) Case No.1363 of 2008 was disposed of exparte on 26.05.2011 by the Family Court, Kanpur and the Court directed Smt Nisha Singh to implead the necessary party and to obtain a declaratory decree, only then she will be entitled to the relief under Section 9 of the Hindu Marriage Act. On 22.11.2011 General Officer Commanding-in-Chief, Easter Command, Kolkata, without waiting for the out-come of the cases pending in different civil courts, passed the impugned orders and in pursuance thereof, the applicant was discharged from service w.e.f. 19.01.2012. Subsequently, on 19.02.2015 Addl. Civil Judge, Kanpur Nagar decided the Declaratory Suit No.632 of 2011 Smt. Poonam Singh vs. Ajay Kumar Singh and the Court declared that Smt Poonam Singh and Ajay Kumar Singh are husband and wife, who were married on 16.02.2007. The appeal preferred against the said order was also allowed and the order of the Magistrate under the Domestic Violence Act was set aside.

(7) The submission of the learned counsel for the applicant is that in view of provision of Para 333 (C)(c) of the Regulations for the Army 1987 (revised), the competent

authority was required to wait for the decision of the civil court, but without waiting for the same, the order has been passed and accordingly, the order of discharge, so passed against the applicant, becomes unsustainable under law.

- (7) Before proceeding further, we would like to reproduce Section 20 of the Army Act, 1950, Army Rules 17 of 1954 and Para 333 (C)(c) of the Regulations for the Army 1987 (revised), which reads as under :

Section 20 of the Army Act, 1950:

“20. Dismissal, removal or reduction by (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 the service 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 or rank or the ranks, any warrant officer or any non-commissioned 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 there under. “*

Army Rules 17 of 1954

“17. Dismissal or removal by Chief of the Army Staff and by other officers.—*Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or subsection (3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed*

reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service : Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order, the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.”

Para 333 (C)(c) of the Regulations for the Army 1987:

“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.”

(underlined by us)

8. During the course of arguments, learned counsel for the applicant has drawn our attention towards the marriage certificate issued on 07.05.2009, wherein Smt Poonam Singh is registered as legally wedded wife of the present applicant Ajay Kumar Singh. A copy of the judgment passed by the ACMM- I, Kanpur Nagar in Complaint Case No.8929 of 2008 Smt. Nisha Singh vs Ajay Kumar Singh under Section 12 of the Domestic Violence Act has also been filed, wherein the Magistrate had directed to grant maintenance in favour of the applicant vide order dated 13.01.2010. Feeling aggrieved by the said order, Criminal Appeal No.58 of 2010 was filed by the applicant before the Sessions Judge. The said order of maintenance was stayed by the Court of Addl. Sessions Judge, Court No.6, Kanpur vide his order dated 21.04.2011.

9. A case under Section 9 of the Hindu Marriage Act bearing No. 1363 of 2008 was filed by Nisha Singh against the applicant and an exparte order was passed in the said case on 26.04.2011, whereby a direction was given to

Smt Nisha Singh to file a declaratory suit impleading Smt Poonam Singh as opposite party and only thereafter, an order can be passed. A copy of the judgment in the case of 632 of 2011 Smt Poonam Singh vs Ajay Kumar Singh has also been filed. This is a declaratory suit filed by Smt Poonam Singh, wherein a declaration has been made to the effect that Smt Poonam Singh is the legally wedded wife of the applicant. Finally the case under the Domestic Violence Act was disposed of in Criminal Appeal No.58 of 2010 vide judgment dated 26.11.2016 and the order passed by the Magistrate was set aside and it was observed that in view of declaratory decree, Poonam Singh is the legally wedded wife of the applicant.

10. In this perspective, the argument of the learned counsel for the applicant is that since the civil court of competent jurisdiction has held that Smt Poonam Singh is the legally wedded wife of the applicant and the respondents have taken action against the applicant without waiting for the out-come of civil court proceedings and have acted in utter violation of Para 333(C)(c), quoted above, hence the order is unsustainable under law.

11. Law is settled on the point that so far as the civil rights of the parties are concerned, judgment given by the civil court is binding. On this point, we may refer the pronouncement of the Hon'ble Apex Court in the case of ***Guru Granth Saheb Sthan Meerghat Vanaras vs. Ved Prakash & Ors***, Civil Appeal No. 4166 of 2013 (Arising out of SLP (C) No. 12644 of 2009).

12. In reply to the aforesaid arguments, learned counsel for the respondents has conceded that since a competent civil court has decided that Smt Poonam Singh is the wife of the applicant and admittedly the cases were pending for determination of the civil rights of the parties, therefore, respondents were under obligation to wait for the outcome of the said litigation, but without waiting for the outcome of the said order so passed, the impugned orders have been passed by the respondents. He has fairly conceded the legal position that so far as the civil rights of the parties are concerned, the judgment of the civil court is binding.

13. Since there is a declaratory decree passed by a Court of competent jurisdiction in favour of Smt Poonam Singh that she is the legally wedded of the applicant, therefore, the decision of the respondents on the ground that the applicant contracted plural marriage with Smt Nisha Singh loses all its basis.

14. In view of the discussions, made herein above, the O.A. deserves to be allowed and the impugned orders dated 22.11.2011 and 19.01.2012 passed by the respondents deserve to be set aside. Since the order of discharge of the applicant was passed without any substance, therefore, the applicant has a right to be reinstated in service from the date he was discharged.

15. In view of this, this O.A. is hereby **allowed** and the impugned orders dated 22.11.2011 and 19.01.2012 passed by the respondents are hereby set aside. The respondents are directed to reinstate the applicant in service forthwith with all consequential benefits and the applicant shall be entitled only to 50% of the back wages for the period he has remained out of service.

The respondents are directed to complete this exercise within a period of four months from today, failing which the applicant shall be entitled to interest @ 9% per annum on the total amount accrued from due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : January , 2019.
PKG