

RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
(CIRCUIT BENCH NAINITAL)**

O.A. No. 427 of 2021

Thursday, this the 2nd day of June, 2022

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

No. 4092275K Nk Devendra Singh, S/o Shri Kunwar Singh, R/o Village-Dharghaat, P.O.-Mahalchauri, Tehsil-Gairsain, District-Chamoli.

..... Applicant

Ld. Counsel for the: **Shri Kishore Rai**, Advocate
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Senior Record Officer, Records Garhwal Rifles, Pin-900400, C/o 56 APO.
4. Commander, HQ 181 Mountain Brigade, Pin-908181, C/o 99 APO.

..... Respondents

Ld. Counsel for the : **Shri Rajesh Sharma**, Advocate
Respondents Central Govt Counsel.

ORDER

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

“(i) A direction to quash the order dated 25.09.2019 passed by respondent No 4 (contained as Annexure No 8 to this original application) or to-

(ii) A direction to reinstate the applicant with all consequential benefits to the applicant as per rules or to-

(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.03.2010 and was discharged from service on 01.10.2019 under Rule 13 (3) III (v) of Army Rules, 1954 on an alleged ground that he contracted plural marriage. As per records, the applicant was married with Smt Vimla Devi on 14.11.2014 and a child named master Vedansh Singh was born on 07.08.2015 from their wedlock. While the applicant was serving with 3rd Garhwal Rifles, a complaint dated 28.06.2017 was received from Smt Vimla Devi (applicant's wife) seeking maintenance allowance on the ground that the applicant (her husband) solemnized second marriage. A Show Cause Notice dated 03.04.2019 was issued to the applicant and unit authorities issued verification letter dated 10.05.2019 addressed to Superintendent of Police, Chamoli (UK) and Senior Superintendent of Police, Pauri (UK). Accordingly, report dated 20.06.2019 of Local Intelligence Unit (LIU) was received and based on that report the applicant was discharged from service on

01.10.2019 (FN). This O.A. has been filed to quash discharge order dated 25.09.2019 and re-instate the applicant in service with all consequential benefits.

3. Submission of learned counsel for the applicant is that Smt Vimla Devi is the legally wedded wife of the applicant and they are having a son named Master Vedansh Singh. He further submitted that due to some misconception, applicant's wife wrote a letter to respondent No 4 alleging that applicant is not taking her care therefore, she should be granted maintenance allowance. His further submission is that based on illegal report of the LIU, a Show Cause Notice dated 03.04.2019 was issued to the applicant and he was discharged from service.

4. Learned counsel for the applicant further submitted that due to some family dispute there were some strained relations between husband (applicant) and wife and therefore, she had levelled allegations against her husband but later when she came to know that services of her husband may be terminated due to her complaint, she wrote letter dated 25.04.2019 to the President AWWA, Kolkata intimating that allegations leveled against her husband were based on hearsay and the fact was that Ms Sonam was married to Shri Aman and not with Devendra Singh (her husband). In that letter she also requested to withdraw her complaint. Learned counsel for the applicant further submitted that even after submitting factual position by applicant's wife to the respondents, applicant was discharged from service without application of mind and giving another opportunity of hearing to the

applicant which is illegal and arbitrary. He pleaded for setting aside the discharge order and re-instate the applicant in service.

5. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 15.03.2010 and after completion of military training, he was posted to 3rd Battalion of the Garhwal Rifles on 10.04.2011. The applicant was married to Smt Vimla Devi on 14.11.2014 and a child named Vedansh Singh was born on 07.08.2015 from their wedlock. He further submitted that a complaint dated 28.06.2017 was received from Smt Vimla Devi (wife of the applicant) seeking maintenance allowance in her favour by mentioning that her husband contracted plural marriage. Accordingly, a Show Cause Notice (SCN) dated 03.04.2019 was issued based on report of LIU and he was discharged from service w.e.f. 30.09.2019 (AN). He pleaded for dismissal of O.A. on the ground that the applicant contracted plural marriage.

6. Heard Shri Kishore Rai, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents and perused the material placed on record.

7. It is not disputed that the applicant was enrolled in the Army and was serving in 3rd Battalion of the Garhwal Rifles. On 28.06.2017, a complaint from Smt Vimla Devi (applicant's wife) was received by the respondents alleging that her husband solemnized plural marriage with Ms Sonam and that she be granted maintenance allowance. Based on the complaint, and a report of

LIU, a Show Cause Notice dated 03.04.2019 was issued to the applicant and he was discharged from service.

8. The records reveal that due to misconception Smt Vimla Devi (wife of the applicant) had made allegations with regard to solemnizing second marriage but later when their relations became normal, wife of the applicant gave an affidavit dated 08.04.2019 (five months prior to applicant's discharge from service) that Smt Sonam was married with Shri Aman Kumar and that the allegations made earlier were false and based on hearsay.

9. Further, Smt Vimla Devi had also written letter dated 25.04.2019 to the President Awwa, Kolkata stating as under:-

1. यह कि मैं अपने पति दल संख्या 409273 k देवेन्द्रसिंह त्रतीय गढ़वाल राइफल की एकमात्र विवाहिता वैधानिक पत्नी हूँ / जिन से मेरा एक लड़का वेदांश उम्र लगभग 3 साल 6 माह से ऊपर है /

2. यह कि माह मई 2017 से दिसंबर 2017 तक मेरे पति का मुझसे कोई संपर्क न होने तथा उनके द्वारा भरण पोषण के लिए कोई खर्चा न देने और इस दौरान अवकाश पर घर न आने तथा कुछ दिनों बाद गलत अफवाएं फैलने पर प्रार्थिनी ने अपना शिकायती प्रार्थना पत्र दिनांक 28 जून 2017 को श्रीमान जनरल आफिसर कमांडिंग सब एरिया देहरादून को इस आशय का दिया कि प्रार्थिनी के पति देवेन्द्रसिंह द्वारा प्रार्थिनी से कोई संपर्क न करने भरण-पोषण के लिए खर्चा न देने तथा प्रार्थिनी के जीवित रहते सोनम नाम की लड़की से दूसरी शादी रचने की गलत अफवाएं प्रार्थिनी ने प्रतिकूल एवं विषम परिस्थितियों से भाववेश में आकर अपने पति देवेन्द्रसिंह के विरुद्ध शिकायती प्रार्थना पत्र दिया था /

3. यह कि इस शिकायती प्रार्थना पत्र के आधार पर संबन्धित थाना पुलिस कोर्टद्वारा से जो वेरिफिकेशन वांछित कार्यालय को गया वह भी तथाकथित अफवाओं के आधार पर गया है जबकि प्रार्थिनी द्वारा स्वयं पूछताछ छानबीन एवं जांच करवाए जाने पर प्रार्थिनी को पुख्ता प्रमाण मिला कि सोनम नाम की लड़की ने उसके पति देवेन्द्रसिंह के साथ कभी भी कोई शादी नहीं रची वल्कि सोनम ने अमन कुमार नाम के लड़के जो द्वितीय गढ़वाल राइफल्स में कार्यरत है , से विवाह कर विवाह पंजीकरण कर लिया है और उनके विवाह पंजीकरण के प्रमाण पत्र की छायाप्रति मिलने के उपरांत प्रार्थिनी पूर्ण रूप से आस्वस्त व विश्वास में आ गई है , कि वास्तव में उनके पति द्वारा सोनम नाम की लड़की से दूसरी शादी रचने की गलत अफवाएं थीं और उपरोक्त तथा कथित दिनों में पति को अवकाश न मिलने के कारण व्यक्तिगत परेशानी के कारण प्रार्थिनी का पति देवेन्द्रसिंह प्रार्थिनी को उनके भरण पोषण के लिए खर्चा नहीं दे पाया था / चूंकि प्रार्थिनी स्वयं कम पढ़ी लिखी तथा ग्रामीण महिला है गलत अफवाएं तथा मई 2017 से दिसंबर 2017 तक इस दौरान पति द्वारा खर्चा न देने तथा किसी प्रकार का संपर्क न साधने की परिस्थितियों के आलोक में प्रार्थिनी द्वारा भाववेश परिस्थिति वस अपने पति देवेन्द्रसिंह के खिलाफ शिकायती प्रार्थना पत्र दिया जिसमें सेना द्वारा प्रार्थिनी के पति के विरुद्ध शिकायती प्रार्थना पत्र के आधार पर प्रशासनिक कार्यवाही गतिमान है /

4. यह कि प्रार्थिनी वर्तमान में जिला चमोली के उत्तराखंड के स्थान राडीबगड़ पो-ठरली जिला-चमोली में अपने बच्चे के साथ किराये के मकान पर रह रही है / प्रार्थिनी व उसके पति के मध्य वर्तमान में कोई विवाद या मतभेद नहीं रह गया है /

प्रार्थिनी का पति देवेन्द्रसिंह प्रत्यक्ष एवं परोक्ष रूप से हम दोनों का नियमित रूप से सम्यक भरण-पोषण व सुध खबर लेते आ रहा है | प्रार्थिनी को अपने पति पर किसी पक्षकार की आपत्ति नहीं है | प्रार्थिनी वर्तमान में अपने नावालिंग बालक के साथ शांतिपूर्वक अमन चैन से रह रहे हैं , उसे अपने पति पर कोई शिकायत नहीं है | यदि सेना द्वारा प्रार्थिनी के पति कोई कार्यवाही की जाती है तो प्रार्थिनी व उसके पुत्र के भरण-पोषण आदि पर इसका प्रतिकूल प्रभाव पड़ सकता है | आज तक प्रार्थिनी द्वारा अपने पति के विरुद्ध भावावेश में आकर जो भी प्रार्थना पत्र व शिकायती पत्र सेना को प्रेषित किए गए हैं उन पर कोई भी कार्यवाही प्रार्थिनी नहीं चाहती है | यदि प्रार्थिनी के पति के विरुद्ध कोई कार्यवाही अमल में लाई जाती है तो प्रार्थिनी व उसके नादान बच्चे के भरण-पोषण का जिम्मेदार कौन रहेगा ? जिस कारण प्रार्थिनी अपने पति विरुद्ध दिये गए प्रार्थना पत्रों अग्रिम कोई कार्यवाही नहीं चाहती है |

5. अतः निवेदन है कि प्रार्थिनी व उसके नादान पुत्र के भविष्य को मध्य नजर रखते हुए प्रार्थिनी के पति देवेन्द्रसिंह के विरुद्ध विचाराधीन विभागीय प्रशासनिक कार्यवाही को समाप्त कर उन्हें सेवा में बहाल करने की क्रपा की जाय |

दिनांक : 25.04.2019

sd/- x x x x x

(Applicant)

प्रतिलिपि 1. मुख्यालय 181 पर्वतीय उपखंड पिन 908181 , मार्फत 99 पत्रालय
2. कमान अधिकारी महोदय , तृतीय गढ़वाल राइफल पिन 910703 मार्फत 99 पत्रालय "

10. From the aforesaid we observe that Smt Vimla Devi, wife of the applicant, had written a letter to concerned respondents five months prior to discharge of the applicant in which she had mentioned that the allegations were made against her husband based on fake rumours from the environment which later proved to be false and that is why she informed the authorities concerned not to take action against her husband.

11. From the marriage certificate placed on record we find that it pertains to marriage of Shri Aman Kumar S/o late Hari Prasad of village-Kumale Gaon, post-Mawadhar Komai Gaon, Pauri Garhwal with Ms Sonam and the certificate was registered on 03.10.2017 but Shri Pradeep Jadalee (Pandit who solemnized marriage) in his certificate dated 31.07.2018 (Annexure No 3) has stated that he solemnized marriage of Devendra Singh with Sonam on 08/09 May, 2017 which seems to be contradictory.

12. Letter dated 10.05.2019 was written by the respondents to the civil agencies for verification of the following:-

- (i) Issue of Devendra Singh having married Ms Sonam on 08 May 2017 may once again be verified.
- (ii) Authenticity of marriage certificate produced by the individual may be verified.
- (iii) Marriage of Ms Sonam to Mr Aman Kumar S/o late Hari Prasad r/o Kumale Gaon, Pauri Garhwal may be verified.

13. We find that the verification in respect of Army personnel should have been carried out by the District Soldier Board and not by the LIU. The issue, that Devendra Singh was married with Ms Sonam, was denied by applicant's wife as per affidavit dated 08.04.2019. Marriage certificate clearly indicates that Ms Sonam was married to Shri Aman Kumar S/o late Hari Prasad r/o Kumale Gaon, Pauri Garhwal who is not the applicant. We also observe that at the time of registration of marriage Aadhar numbers are verified in respect of husband and wife and are endorsed on marriage certificate. On the marriage certificate Aadhar numbers of Aman Kumar and Ms Sonam are endorsed as proof of identity. If Devendra Singh had solemnized marriage with Ms Sonam then his Aadhar number would have been endorsed on the marriage certificate. We find that Aadhar number of Aman Kumar and Ms Sonam are endorsed on marriage certificate which clearly establishes that Devendra Singh did not marry with Ms Sonam. This marriage certificate was found authenticated on verification by the respondents.

14. In view of the above, we find the following:-

(i) Allegations levelled against the applicant by her wife were withdrawn five months prior to discharge of the applicant.

(ii) Marriage Certificate belongs to Aman Kumar whose wife is Ms Sonam and Aman Kumar is serving in the Army (2nd Battalion of the Garhwal Rifles).

14. In view of the authenticity of the marriage certificate and withdrawal of allegations made by her wife prior to five months from the date of discharge of the applicant, we find that the applicant should not have been discharged from service keeping in view of his unblemished service record and length of service.

15. With the aforesaid observations, impugned order dated 25.09.2019 is quashed and respondents are directed to re-instate the applicant in service in the same rank that he was discharged, forthwith. We further make it clear that applicant is not entitled to pay and allowances with effect from the date of discharge till he is reinstated. However, In case of delay in his reinstatement by more than six weeks from the date of this order, applicant will be paid pay and allowances due to him from the date of this order.

16. O.A. is **allowed**, accordingly.

17. No order as to costs.

18. Pending miscellaneous applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 02nd June, 2022
rathore