

Reserved

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

Court No- 1

ORIGINAL APPLICATION No. 224 of 2018

Tuesday, this the 01st Day of November, 2022

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

Ram Gopal Sharma, JC-819731K, Nb Sub (MP), Son of Sri
Asharfi Lal Sharma, R/o Village- Khajuria Zulfikar, P/o- Mudiya,
Ahmed Nagar, PS- Izzatnagar, District- Bareilly (U.P.)- 243122

..... Applicant

Ld. Counsel for the: **Shri Vijay Kumar Pandey,**
Applicant **Advocate.**

Versus

1. Union of India, through Secretary to the Government of India, Ministry of Defence, South Block, RK Puram, New Delhi.
2. Chief of the Army Staff, Integrated Head Quarters of Ministry of Defence (Army), South Block, New Delhi- 110001.
3. Additional Directorate General Discipline & Vigilance (DV-3A), Adjutant General Branch, Integrated HQ of MoD (Army), New Delhi – 110011.
4. Commanding Officer, Western Command Provost Unit, PIN- 900475, C/o 56 APO.

5. OIC Records, Western Command Provost Unit, PIN-900475, C/o 56 APO.

.....Respondents

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

ORDER

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

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

(i). *That this Hon’ble Tribunal may kindly be pleased to quash the impugned discharge order & show cause notice dated 25.01.2016 & 05.01.2016, passed & issued by opposite party No. 2 & 3, contained as annexure No. 1 & 21, with all consequential benefits with promotion and other benefits wef 25.01.2016.*

(ii). *That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the cost of Rs. 20,00,000/- (Rupees twenty lac only) for mental and physical harassment and agony and Rs. 20,000/- (Rupees twenty thousand only) for financial loss at expenses in filling the instant original application with the interest @ 18% p.a. in the interest of justice to the applicant against the opposite parties.*

(iii). Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 27.01.1988. He was married to Smt Kusumlata as per Hindu Rites on 11.06.1995. Smt Kuasha Devi made a complaint to respondents that applicant married her on 19.07.2002. A Court of Inquiry was held on 05.02.2015 and applicant was discharged from service on 25.01.2016. The applicant represented his case for reinstatement in service but his representation was rejected. Being aggrieved, applicant has filed instant Original Application for reinstatement in service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 27.01.1988. Since date of enrolment, applicant performed his duties to the entire satisfaction of his superiors and no one had raised any allegation against him. Applicant is law abiding citizen and he was never involved in any case except the present false and fabricated case. Applicant was locally discharged from service on 25.01.2016 under Section 20(I) of Army Act read with Army Rule 13 and in terms of Para 333 (C) (c) of Regulation for the

Army (Revised Edition), 1987, by the opposite party No 2, on the ground of contracting plural marriage with Ms. Kuasha Devi on 19.07.2002 at Nainital.

4. Applicant met with Ms. Kuasha Devi during his tenure at Nainital and she told the applicant that she was a widow. The sole truth is that applicant also conveyed his family details, thereafter she used to meet applicant quite often and used to seek help and later she fell in love with the applicant. Applicant never solemnized the marriage with Smt Kuasha Devi. After some time, she started blackmailing the applicant as well as his family members by way of initiating civil and criminal proceedings. She levied serious allegations against the applicant and his family members only to blackmail and pressurise the applicant to get money for which she filed case No 77/2012 and 73/2012 under Section 125 of CrPC but never appeared before the Court to establish her case and both the cases have been dismissed by the Hon'ble Court on 25.01.2014 and 10.09.2014 which prove that she wanted to exploit the applicant. She prepared false iqrarnama, marriage certificate dated 10.01.2015, photographs and prescriptions of Hospital, which are not sufficient evidence to prove the marriage. Smt Kuasha Devi has produced Marriage certificate dated

10.01.2015 issued by Mandir Purohit, Nainital showing her name as Smt Asha, daughter of Shri Pratap Kumar Rai. Smt Kuasha Rai is working in Police Department CB /CID District-Rudrapur. She often uses to threat and blackmail him stating to give her money otherwise she will lodge case against him. On getting money, she keeps quiet for some time and after few days she again starts putting demand of money. In case money is not given to her, she lodges false case against the applicant. She purchased three plots in Rudrapur by the money taken from the applicant. Once at the time of marriage of nephew, she came in the house of applicant, started quarrelling and demanded Rs. 20,000/-. Applicant paid Rs. 20,000/- to her for shake of his honour. Once she came in the house of the applicant with her brother along with few boys and started abusing. Brother and Smt Kuasha Devi attacked family of the applicant and lodged police complaint against him and threatened that in case applicant does not give money, then they will kill his family and forcibly took Rs. 10,000/-. Taking undue advantage of her service, she took lot of money from the applicant. She has given an affidavit stating she is not married to applicant. She has written letters on 06.02.2015, 14.02.2015 and 19.07.2015 to the respondents that she wilfully implicated the applicant in false cases for financial gain and she is

withdrawing the complaints lodged against him. Applicant informed this fact to his superiors but no action was taken by them against the lady but contrarily action was taken against the applicant and he was discharged from service on 16.01.2016 after rendering 28 years and 02 days of service. Learned counsel for the applicant in O.A. has submitted that while passing any order of discharge against a Government servant, the conduct of the Government servant is taken into consideration. However, conduct of the applicant was not considered while discharging him from service. The applicant sent representation for reinstatement in service but his representation was rejected. In spite of the facts stated above, respondents have discharged the applicant from service, depriving him from service benefits without considering the facts of the case as well as without providing any opportunity of hearing to the applicant. Discharge proceeding initiated against the applicant in very illegal and arbitrary manner in violation of Army Act, Section 116, 117 and 120, as such impugned order passed by the respondents is unsustainable under the law and same is against principles of natural justice which is violative of Fundamental Rights as guaranteed by the Constitution of India because they have ignored all facts and factual matrix of the case. Learned counsel for the applicant prayed that impugned

order of discharge passed by the respondents be quashed and directions be issued to respondents to reinstate the applicant in service.

5. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the army on 27.01.1988. As per office record he was married to Smt Kusumlata on 11.06.1995. On 15.12.2014, Smt Kuasha Devi complained respondents that Nb Sub Ram Gopal Sharma married her on 19.07.2002 while posted at Nainital. In support of her contention she produced marriage certificate dated 10.01.2015 issued by Mandir Purohit, Ghodakhal, Nainital. A Court of Inquiry was held and applicant was found blameworthy for contracting plural marriage. Applicant was not found suitable for retention in service on account of misconduct. He was locally discharged from service on 28.01.2016 under Section 20 (1) of Army Act read with Army Rule 13 and in terms of Para 333 (C) (c) in contravention of provisions of Regulations for the Army (Revised Edition), 1987. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

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

7. It is important to understand various aspects of Hindu Marriage Act 1955 so as to understand voidable marriage and valid marriage and such other related issues to decide on the legality of the marriage and subsequently take a conscious decision on issues related to plural marriage.

8. Section 5 of Hindu Marriage Act, 1955 defines condition for a Hindu marriage which reads as under :

“5. Conditions for a Hindu marriage.-

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) Neither party has a spouse living at the time of the marriage;

(ii) neither party is an idiot or a lunatic at the time of the marriage;

(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

(vi) where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage.”

9. Section 11 of the Hindu Marriage Act 1955 defines void marriage which reads as under :

“11. Void marriages.-

Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.”

10. Voidable marriages are defined under Section 12 of Hindu Marriage Act, 1955 which reads as under :-

“12. Voidable marriages.-

(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceedings; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of subsection (1) shall be entertained if-

(i) the petition is presented more than one year after for force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of subsection (1) shall be entertained unless the court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.”

11. According to Section 11, only such marriages are void marriage, which violates the conditions enumerated in clause (i), (iv) and (v) of Section 5 of the Hindu Marriage Act.

12. Para 5 and 6 of Army Order 44/2001 (DV) deals with procedure and conditions of plural marriage. Relevant portion of Army Order is reproduced as under :-

“5. No person subject to the Army Act except Gorkha personnel of Nepalese domicile, whose personal law permits plural marriage and whose previous marriage is subsisting, will marry again without prior sanction of the Central Government.

6. 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 :-

(a) His wife has deserted him and there is sufficient proof of such desertion;

(b) His wife has been medically certified as being insane.

(c) Infidelity of the wife has been proved before a court of law.

13. Further Para 333 (B) (h) of Regulations for the Army deals with plural marriage which reads as under:-

“333. (B) (h) 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 spouse 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, Parasis 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 solemnised 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 re-marry 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.

14. On perusal of document annexed with the pleading, it transpires that Ex Nb Sub Ram Gopal Sharma was posted at Nainital from the year 2000 to 2003. He came in contact with Smt Kuasha Devi in Nainital and friendship developed between them. Ex Nb Sub Ram Gopal Sharma solemnised marriage with Smt Kuasha Devi on 19.07.2002 in Temple at Ghodakhal, Nainital and a marriage certificate was issued by Mandir Purohit. Nb Sub Ram Gopal Sharma has himself signed 'Iqrarnama' confessing that he married to Smt Kuasha Devi on 19.07.2002.

Smt Kuasha Devi has produced birth certificate of her daughter showing father's name of girl child as Ram Gopal Sharma. Accordingly, contention of the applicant that since applicant had not completed ritual of seven steps and vows in presence of fire (Saptapadi) with Smt Kuasha Devi, hence it is not legal marriage is not agreed. On 09.12.2014, Smt Kausha Devi filed complaint to respondents that applicant married her on 19.07.2002 and prayed for maintenance allowance. A Court of Inquiry was held and matter was thoroughly investigated. Applicant was found guilty for contracting plural marriage during subsistence of first marriage. He had completed 28 years of service. He was locally discharged from service on 25.01.2016 for contacting plural marriage under Army Rule 13 and in terms of Para 333 (C) (c) of Regulations for the Army (Revised Edition) 1987.

15. In Indian society being faithful to the spouse alone is a concept understood in relation to laws and norms laid down in the society. The applicant solemnized second marriage with Smt Kuasha Devi. It is a clear-cut case of violation of Section 5 (i) of the Hindu Marriage Act and the object of Regulations for the Army, the intent of which is to maintain public order, morality, health and force discipline in the Army. Therefore, the

discharge order of the applicant is proportionate to the proved allegation. We are of the considered opinion that lenient view was taken by Commanding officer and applicant was discharged from service with pay and allowances. The present O.A. lacks merit and the impugned order does not seem to suffer from any irregularity or illegality, hence deserves to be **dismissed**.

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

17. No order as to costs.

18. Miscellaneous applications pending, if any, shall stand disposed off.

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

Dated: 01 November, 2022
ukt/-