

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 655 of 2021****Thursday, this the 17th day of November, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Kalicharan Thakur (No. 15418514A)
S/o Vidyasagar Thakur
R/o Military Hospital, Ranikhet-900473 (Uttarakhand)
Permanent Address – Ward No. 6, Near Ram Janki Mandir,
Jalwar, Darbhanga, Bihar – 847428

.....Applicant

Ld. Counsel for the Applicant : **Shri Gyan Singh Chauhan &**
Shri K.B. Singh, Advocate

Versus

1. Union of India, through Chief of the Army Staff, Army Headquarter, Ministry of Defence, New Delhi.
2. General Officer Commanding-in-Chief, Headquarters Central Command, PIN – 908544, C/o 56 APO.

.....Respondents

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

ORDER (Oral)

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) To quash the impugned order dated 14.09.2012 passed by respondent no. 2 contained as Annexure no. 1 of the present application in the interest of justice.
- b) To direct respondents to consider the case of applicant and restore/reinstate/rejoin applicant's services from where he is SOS/SORS from the Corps, the interest of justice. Or in alternate direct respondents that applicant should be discharged in lieu of dismissal, by issuing discharge certificate, so that he can get a civilian job, in the interest of justice.
- c) To direct respondents to provide retiral benefits to applicant.
- d) Costs and expenses of the application in favour of the applicant against all the opposite parties.
- e) Any other relief or reliefs which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be granted."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army in August 2003. On the basis of a complaint filed by Aarti Kumari (First wife) that applicant has contracted and solemnized second marriage with Pushpa Mehta, a Show Cause Notice dated 12.05.2012 was issued to the applicant by the respondents to find out the correctness of allegations. The applicant replied the Show Cause Notice and he accepted solemnisation of plural marriage with Pushpa Mehta to whom he married on 17.02.2011. A Court of Inquiry was held and applicant admitted his

marriage with first wife (Aarti Kumari) solemnized on 04.05.2009. Therefore, the services of the applicant have been terminated vide GOC-in-C, Central Command order dated 14.09.2012 in accordance with provisions of Section 20(3) of Army Act, 1950 read with Army Rule 17 and in terms of Para 333 (c) of Regulations for the Army, 1987. Being aggrieved with the punishment of dismissal, the applicant has filed the present Original Application to quash his termination order.

3. Submission of learned counsel for the applicant is that applicant was illegally dismissed from service on the ground of plural marriage vide order dated 14.09.2012 during pendency of criminal case through Show Cause Notice dated 12.05.2012, hence, dismissal order is illegal, arbitrary and against the rules and interest of justice. The investigation of plural marriage is based on alleged first wife (Aarti Kumari) letter dated 29.09.2011 which was dropped by criminal court vide order dated 08.01.2019 passed in the petition which shows that charges against applicant were false, fabricated and concocted. The applicant never admitted to being married to Aarti Kumari in his reply to Show Cause Notice dated 12.05.2012 as the same is not covered under Section 5 of the Hindu Marriage Act and ceremony took place is fake and fabricated. The documents produced by Aarti Kumari were false, fabricated and framed to

mislead the investigation proceedings. The applicant has only one wife i.e. Pushpa Mehta to whom he married on 17.02.2011 and a Part II Order to this effect has been published by the unit. The termination order is wholly illegal, arbitrary, unwarranted and against the provisions of law. The marriage with Aarti Kumari has not been proved and the evidences produced by Aarti Kumari regarding her marriage with applicant 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 for the Army, 1987 and provisions of Hindu Marriage Act, 1955 do not apply in the facts and circumstances of the case and his dismissal order is liable to be quashed.

4. Learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Karnatka High Court in **Ex Naik Clerk (GD) Ganeshan vs. Union of India and Others**, decided on 24.06.2004 and pleaded that this judgment is applicable in the present case and hence, dismissal order dated 14.09.2012 be quashed and applicant be reinstated into service with all benefits.

5. Per contra, submission of learned counsel for the respondents is that applicant married with Smt. Aarti Kumari, D/o Shri Dinanath Mishra on 04.05.2009 as per Hindu Rites. However, applicant did not disclose the marriage in the unit nor any Part II Order of

marriage was published. Marital discord between the applicant and Aarti Kumari started when a complaint against family members of applicant for dowry harassment by her father-in-law and brother-in-law was filed, who were arrested by the police in July, 2011. The applicant during his leave in September-November 2010, met a girl named Pushpa Mehta and had an extra marital affair with her and later married her on 17.02.2011 and after declaring his marriage, Part II Order to this effect was published by the unit. The applicant had confessed in his statement that he did not disclose his first marriage with Aarti Kumari and contracted the second marriage because of strained relation with his first wife Smt. Aarti. Consequently, Smt. Aarti Kumari forwarded a complaint against her husband alleging plural marriage. On receipt of complaint, MH Ranikhet ordered a Court of Inquiry to investigate if the applicant had contracted plural marriage as alleged by Smt. Aarti Kumari. The applicant in his statement before the Court of Inquiry confessed about his second marriage. Therefore, a Show Cause Notice dated 12.05.2012 was issued to the applicant. The applicant in his reply to Show Cause Notice has admitted that he married to Smt. Pushpa Mehta on 17.02.2011. He also submitted that his marriage with Smt. Aarti Kumari on 04.05.2009 was illegal as it was solemnised without his consent, however, applicant was unable to produce any

evidence in this regard. The applicant further admitted that he did not obtain divorce from his first wife before marrying to Smt. Pushpa Mehta.

6. Learned counsel for the respondents further submitted that on analysis of opinion of Court of Inquiry and documents in its entirety, the competent authority opined that applicant had contracted plural marriage. Accordingly, GOC-in-C, Central Command vide order dated 14.09.2012 issued orders for termination of services of the applicant and applicant was dismissed from service in accordance with provisions of Section 20(3) of Army Act, 1950 read with Army Rule 17 and in terms of Para 333 (c) of Regulations for the Army, 1987. He pleaded for dismissal of Original Application.

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

8. From perusal of record, the following facts with regard to applicant's marriage with Aarti Kumari have been noticed/admitted by the applicant :-

(a) Para 8 of his reply to Show Cause Notice reads, "That it is relevant to mention here that the marriage with Arti Kumari was solemnized on social pressure and life of all my families member was in the reason for not lodging the FIR against Arti Kumari and her family member in the police station and not

matrimonial suit (Divorce suit) was filed against (this marriage) her.”

(b) In Court of Inquiry, the applicant as Witness No. 2 has stated in para 13/14 that his father has decided a girl named Miss Arti who was daughter of Shri Dinanath Mishra for my marriage and date was fixed by my father on 04.05.2009. I took one month casual leave w.e.f. 27.04.2009 to 26.05.2009 and got married on 04.05.2009. Thereafter, in paras 28 & 29, applicant stated that he got married secretly for the second time with Smt. Pushpa Mehta on 17.02.2011 in a temple and got the marriage registered at Sub Registrar Office, Didihat, Pithoragarh.

9. From the above, it is established that during the course of Army service, the applicant solemnized marriage with Miss Aarti Kumari (first wife) on 04.05.2009 as per Hindu Rites but Part II Order to this effect was not published by the unit because applicant did not disclose/declare his marriage with Arti Kumari (first wife). Later, applicant contracted second marriage (Plural) with Miss Pushpa Mehta on 17.02.2011 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.

10. 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 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, Buddhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Parsis 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 applicant 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.”*

11. The case law relied upon by the applicant in Para 4 above, do not apply in the present case being based on different facts and circumstances.

12. 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. Applicant's marriage with first wife (Aarti Kumari) has been proved which has been admitted by the applicant himself in the Court of Inquiry and his marriage with Miss Pushpa Mehta (second wife) has been declared by the applicant himself and a Part II Order to this effect has also been published. Thus, the provisions of Para 333 of Regulations for the Army, 1987 completely apply on him and his dismissal on account of plural marriage is as per Rules & Regulations, therefore, termination order dated 14.09.2012 issued by General Officer Commanding-in-Chief,

Central Command is legal and not violative of any Articles of the Constitution of India. Therefore, all pleas taken by the applicant in Original Application to quash his termination order are hereby rejected.

13. In substance, it is clear that the applicant contracted plural marriage with Pushpa Mehta (second wife) on 17.02.2011 without obtaining decree of divorce from his first wife Aarti Kumari 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 applicant.

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

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated : November, 2022
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