

HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 148/2007

Date of Decision: April 16, 2009

Upendra Kumar Sharma ... Petitioner

Through: Ms. Rekha Palli, Adv.

Versus

Union of India & Others Respondents

Though: Ms. Barkha Babbar, Adv.

CORAM:

HON'BLE MR. JUSTICE B.N. CHATURVEDI

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGEMENT

S. L. BHAYANA, J.

This Writ Petition was filed for the issuance of a writ of certiorari to quash the order dated 13th March 2006 passed by the Respondent No.2 and the Movement Order dated 25th December 2000 issued by Respondent No.5. This petition further prays for issuance of writ of mandamus directing Respondents to reinstate the Petitioner with all consequential benefits.

2. The brief facts of the case are that, the Petitioner was appointed as a gunner (DMT) on 24.12.1996. The Petitioner was granted preparatory leave and advance of annual leave from 26.11.1998 to 5.12.1998. However Petitioner failed to rejoin duty on expiry of leave. Petitioner rejoined the duty voluntarily on 8.5.1999. Petitioner was punished for overstaying of leave granted to him without sufficient reason to the tune of 28 days Rigorous Imprisonment and 14 days detention under Section 39 (b) of the Army Act 1950 (hereinafter to be referred as "Army Act") by order dated 10.6.1999.

According to Section 39 (b) of Army Act overstaying of leave without sufficient cause is an offence. The Section is reproduced as under:-

39. Absence without leave.- Any person subject to this Act who commits any of the following offences, that is to say,-

(a) x x x x x

(b) without sufficient leave granted to him..... shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as in this Act mentioned.

On 14.12.1999, a formal complaint was lodged by the mother of Respondent No. 6 that the Petitioner had contracted a second marriage which came to light on receipt of letter dated 30.12.1999 of Zila Sainik Kalyan Evam Punarvas, Meerut. Pursuant to the said complaint, order dated 25.12.2000 was passed by the Respondents which have been challenged in the present petition.

3. Petitioner has challenged the order passed by the Respondents on the ground that the Respondents passed the orders unreasonably without holding any inquiry and in non observance of the principles of natural justice. The Petitioner mentions that the Movement Order dated 25.12.2000 informed him of his local discharge w. e. f. 25.12.2000. According to the learned counsel, Petitioner was hospitalized for acute appendicitis on 29.9.2000 and discharged after surgery on 22.10.2000. Further according to the Petitioner, the Respondent No.6 i.e alleged second wife of the Petitioner lodged an illegal false FIR against him alleging second marriage with her. Accordingly a case was registered against him under Section 420 and 494 IPC and he was tried by the

court of the learned Chief Judicial Magistrate, Meerut in which he was later acquitted.

4. Further, the learned counsel for Petitioner argued that Petitioner's discharge was illegal, erroneous and arbitrary passed by ignoring the provisions of para 333 (C) (c) of the Defence Service Regulations which deals with action to be taken in a case where a complaint of plural marriage is made. The provision provides for administrative action for termination of services to be initiated but where a civil court of competent jurisdiction has taken cognizance, it is to be treated as sub-judice.

5. The Petitioner further proceeds that the Respondent No. 6 could not produce any evidence in support of her marriage and accordingly filed another affidavit stating that she had no relation with the Petitioner. The Ld. Chief Judicial Magistrate, Meerut acquitted the Petitioner of the charges levelled against him on the basis of facts stated by the complainant i.e. Respondent No.6 in the affidavit and compromise was arrived at between the parties.

6. The Petitioner made representations to the Respondents requesting respondents to reinstate the

Petitioner with consequential benefits, these representations were not decided upon by the Respondents and therefore, the Petitioner approached the Hon'ble High Court of Judicature at Allahabad wherein the Respondents were directed to consider and decide the representations of the Petitioner within the time granted by the Hon'ble High Court. According to the Petitioner as the Respondents did not decide the representations within the granted time, he filed a contempt petition and immediately on receipt of the contempt petition notice the Respondents hastily issued an order rejecting the Petitioner's representations.

This matter had come up before the Hon'ble High Court of Judicature at Allahabad which was pleased to dismiss the petition on the ground of lack of territorial jurisdiction following which the Petitioner has filed the petition in question.

7. It is further contended by the learned counsel for Petitioner that the Respondents have rejected his representations illegally and that the allegation of second marriage is false and has not been proved as he was acquitted of criminal charges in the court of the learned Chief Judicial Magistrate, Meerut. It is

emphasized by the Petitioner that the basis of his discharge from service was false.

8. The Respondents have contested the claim of the Petitioner on the ground that the current petition being a third one on the same grounds and relief is barred by res judicata.

Learned counsel for the Respondents has further contested the petition stating that the Petitioner in the interview with the Commanding Officer after his arrival had never disclosed that he was having a problem during the period of time when he was absent without leave. The Respondents' further proceed that the service documents of the Petitioner show his marriage as on 7.3.1996 but the incidence of it was not known until it was published by the Petitioner's father in the month of June 1999.

9. Further, according to the Respondents the Petitioner had married Miss Geeta Sharma according to Hindu rites on 7.3.1996, the incidence of which was known only in June 1999. According to the Respondent's investigations the Petitioner had overstayed his leave during the period in which he was married to the Respondent No. 6, i.e. the

Petitioner contracted the second marriage when he was absent without leave. Further, according to the unit's investigations the lady possessed photographs of the wedding including a video cassette as well as a certificate of marriage by the Village Elder.

10 It is pointed out by the Respondents that with regard to the FIR against the Petitioner under Sections 420 and 494 IPC and his acquittal, there was no proof as to his not having contracted the second marriage; as a settlement had been arrived at by way of compromise and the second wife viz. Respondent No. 6 had merely withdrawn her complaint against him. Further, according to the Respondents the Petitioner was served a show-cause notice to which the Petitioner submitted a reply dated 22.6.2000.

11. It is contended by the Respondents that there has been no violation of para 333 of Defence Service Regulations and the principles of natural justice as the reply to the show-cause notice was perused by the GOC in C Eastern Command and directed for the termination of his service under Army Act read with Rule 17.

Again, the Respondent No.6 who has been made a party to the suit further reiterates in her affidavit before this Court that the Petitioner was married to her as per Hindu Rites and ceremonies on 5.2.1999 at Meerut and the petitioner had cheated her by keeping her and her family in the dark about his past family life including his first subsisting marriage.

12. We observe that the core issue to this matter is that whether the acquittal of the Petitioner of criminal charges by the Ld. Chief Judicial Magistrate, Meerut is sufficient to absolve the Petitioner from the charge of plurality of marriage which forms the sole basis of the issuance of orders relating to his discharge from service.

With regard to the issue in question, it is worth noting that in cases of plural marriage, it is not a disciplinary action but an administrative action that has to be initiated relating to the termination of service; however, para 333 of the Defence Service Regulations provides that where the matter receives cognizance before a competent civil court, it is sub-judice and decision of the Court is to be awaited before any action is taken.

With reference to the issue in hand applicable extracts of the relevant provisions have to be considered viz. that of the Section 19 of the Army Act 1950 which says that the termination of services of any employee is subject to the provisions of the Act and the Rules and Regulations made under the Act. Sub-rule (2) of Rule 14 of the Army Act on which reliance is placed is as follows:

"14. Termination of service by the Central Government on account of misconduct. –

(1) when it is purported to terminate the service of an Officer under Section 10 on account of misconduct, he shall be given an opportunity to show-cause in the manner specified in Sub – rule (2) against such action:-

Provided.....

- (a) XXX XXX
- (b) XXX XXX

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence"

13. On this issue the learned counsel for Respondents' state that the Petitioner was served a show-cause notice to which the Petitioner submitted a reply dated 22.6.2000, thereby the necessities under the Army Act of Sub-rule (2) of Rule 14 are put to rest.

14. We have observed that the Petitioner relies on the affidavit filed by the Respondent No. 6 in the court of the learned Chief Judicial Magistrate, Meerut wherein she had stated that she never had any relation with the Petitioner.

The Petitioner relies on the ground that his acquittal of the criminal charges under Section 420 and 494 of the IPC has rendered him free from his alleged unison with the Respondent No. 6 and hence, according to him the basis of his discharge has been rendered false. However, the Petitioner's acquittal is not sufficient to absolve him of his alleged second marriage with the Respondent No. 6. On the other hand Respondent No.6 possesses a certificate of marriage by the Village Elder and an album of photographs and a video cassette of the wedding and she has further reiterated about her marriage with

the Petitioner as per Hindu customs and rituals in an affidavit filed before this Court.

Moreover, the condition of a show-cause notice has been shown satisfied by the Respondents in the form of the response of the Petitioner. Hence, Rule 14 of the Army Act stands satisfied and further, the regulations envisaged in para 333 (C)(c) of the Defence Service Regulations stand satisfied.

15. With regard to the actions against a party involving penal or adverse consequence, it should be such as, that would be in accordance with the principles of natural justice; however, the application of such principles cannot be straitjacketed into a singular formula. Hence, the decision should be in the light of the facts and circumstances and should be arrived at, in a just and objective manner. In the present case, the procedure followed was in accordance with the provisions and regulations provided. The decision was arrived at after the investigations were carried out by the unit and the Petitioner had also been given an opportunity to make his representation as well, in this regard the orders against which this present petition lies are not

arbitrary and in our opinion no prejudice has been caused to the Petitioner by the procedure followed.

16. In the net result the petition is without any merit and the same is, therefore, dismissed.

17. No order as to the costs.

S.L. BHAYANA,J.

B.N. CHATURVEDI, J.

April 16,2009