

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:75158-DB

Reserved on:20.08.2024

Delivered on:14.11.2024

Court No. - 2

Case :- WRIT - A No. - 21613 of 2021

Petitioner :- No.1481359h Ex.Naik Devendra Singh Kushwaha

Respondent :- Armed Forces Tribunal Regional Branch Lucknow And
Ors.

Counsel for Petitioner :- Nishant Verma

Counsel for Respondent :- A.S.G., Varun Pandey

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per : Rajan Roy, J.)

1. Heard Shri Nishant Verma, learned counsel for the petitioner and Shri S.B. Pandey, learned Senior Counsel/ Deputy Solicitor General of India assisted by Shri Varun Pandey, learned counsel for the opposite parties.

2. This is a writ petition under Article 226 of the Constitution of India challenging the judgment and order dated 01.09.2021 passed by the Armed Force Tribunal, Regional Bench, Lucknow in Transferred Application No. 84 of 2016; Devendra Singh Kushwaha Vs. General Officer, Commanding-in-Chief, Central Command, Lucknow and the

order of termination of services of the petitioner dated 02.02.2001 along with ancillary/consequential reliefs.

3. The facts of the case in brief are that the petitioner was appointed as Sainik in the Indian Army on 09.04.1987. He was promoted to the rank of Naik in October, 1995. It is an admitted position that the petitioner was married to one Anita Devi and her name finds mention in Part - II order which pertains to "kind read roll and names of heirs". On 05.05.1999 the petitioner requested that his wife Smt. Anita Devi was staying at his native place with two children, therefore, he be allowed for outliving permission on CILQ i.e. Compensation in lieu of Quarters. Accordingly, on 29.05.1999 he was permitted to stay with his family. The petitioner vacated the CILQ accommodation on 31.12.1999. On 10.07.1999 a letter was received from JWO B. Singh of Air Force Station, New Delhi that Nayak Devendra Singh Kushwaha (petitioner) had married his daughter Ms. Rohini Devi @ Jyoti while he was posted in GE 866 EWS (Andaman Nikobar). On inquiry, it was found that petitioner was staying with Ms. Rohini Devi @ Jyoti in the CILQ accommodation and his legally wedded wife and children were not staying with him. Accordingly, the concerned officials were informed about his plural marriage on 17.07.1999. The BEG Records advised to investigate the matter to find out the facts. Accordingly, a show cause notice was issued by the Commanding Officer of the Unit to the petitioner on 11.10.1999 and in his reply dated 18.10.1999 he responded that he had solemnized second marriage with Ms. Rohini Devi in front of Notary Magistrate, Azamgarh, U.P. on 07.04.1999. An affidavit was also submitted by the petitioner in this regard which clearly stated that he married Ms. Rohini Devi on 07.04.1999. The matter was reported to GOC-in-C, Central Command, Lucknow and accordingly a show cause notice dated 22.03.2000 was served upon the petitioner on 31.03.2000. The matter was also got investigated through District Sainik Welfare Office, Bhind vide letter dated 11.05.2000. In his reply to the show cause notice the petitioner

admitted contracting plural marriage with relevant affidavit filed before the Notary Magistrate, Azamgarh on 07.04.1999. Accordingly, as per the directions of GOC-in-C, Central Command, Lucknow vide letter dated 02.02.2001 the services of the petitioner were terminated from the Indian Army on 13.03.2004 under Para 333 of Army Regulations, 1987. Being aggrieved the petitioner filed a writ petition before this Court which was ultimately transferred to the Armed Forces Tribunal, Regional Bench, Lucknow and was registered as Transferred Application No. 84 of 2016. The said Transfer Application No. 84 of 2016 had been dismissed by the Tribunal. Hence this writ petition.

4. The only contention raised by the petitioner's counsel was that marriage between the petitioner and the alleged Ms. Rohini Devi @ Jyoti as per Hindu rites and customs was not proved as per law and mere affidavit before a Notary does not amount to marriage for attracting the provisions of Para 333 of the Regulations of the Army of 1987 and factum of plural marriage had to be proved but the same has not been proved, therefore, his services have wrongly been terminated.

5. Per contra the learned counsel for the opposite parties submitted that the petitioner has all along admitted the second marriage and therefore, his services were rightly terminated in terms of Para 333 of the Army Regulations, 1987 by an administrative action which did not require any disciplinary proceedings or court martial and the Tribunal has rightly rejected the challenge by the petitioner to his termination from service.

6. Having heard learned counsel for the parties and having perused the records we find firstly that marriage of the petitioner with Anita Devi is admitted. The only question is as to whether he contracted a second marriage during the subsistence of first marriage, with Rohini Devi @ Jyoti.

7. In this regard before considering the facts we may refer to Para 333, according to which, in the event of second marriage as referred above, services of an Army Personnel can be terminated by an administrative order on such second marriage being proved without taking recourse to trial by Court Martial or summary disposal by disciplinary action. This provision contained in Para 333 of the Army Regulations, 1987 is not under challenge.

8. Now, coming to the facts of the case, the petitioner has himself stated in Para 10 of the writ petition that in pursuance to show cause notice he filed a reply on 30.04.2000 wherein he had stated that he had married Ms. Rohini Devi on 07.04.1999 on an affidavit sworn before the Notary Magistrate, Azamgarh, U.P. He has further stated that on 12.10.1999 he has obtained divorce before the Notary Magistrate, Azamgarh, U.P. and admitting his fault he requested for being exonerated. He has annexed a copy of reply dated 30.04.2000. The reply mentions about the first Notary affidavit dated 07.04.1999 and the second Notary affidavit dated 12.10.1999. Copy of the reply annexed as Annexure No. 3 to the writ petition, therefore, obviously the said reply is admitted to the petitioner and the contents thereof are also admitted in Para 10 to the writ petition. We have perused the said reply dated 30.04.2001 wherein the petitioner has stated that he had mistakenly married Rohini Devi on 07.04.1999 in front of Notary Magistrate, Azamgarh, U.P. and that he has taken a divorce before the Notary Magistrate on 12.10.1999. The said Rohini Devi was not residing with him since the last six months and that he shall not commit this mistake in future. The affidavit dated 07.04.1999 is on record. This affidavit has not been denied by the petitioner. In Para 2 of the affidavit it has been categorically asserted that the deponents, who were the petitioner and Rohini Devi, had married each other as per Hindu rites and customs, therefore, the contention of the petitioner's counsel that the marriage between petitioner and Rohini Devi is not proved, is incorrect. An admission is the best evidence. Moreover, as regards the

subsequent affidavit dated 12.10.1999 by which he claims to have dissolved the marriage, though, the same is not on record another affidavit dated 06.04.2000 is on record which says that the original of the affidavit dated 12.10.1999 is not traceable and therefore, the said affidavit dated 06.04.2000 was being filed and it goes on to state that the deponent, namely, Devendra Singh Kushwaha had married Rohini Devi on 07.04.1999 and the said marriage has been dissolved on 12.10.1999. Photocopy of the affidavit dated 12.10.1999 was annexed with this affidavit dated 06.04.2000. These documents have also not been denied. The recitals in these documents which are undisputed clearly prove marriage by the petitioner with Rohini Devi i.e. second marriage during subsistence of first marriage.

9. In this view of the matter, the opposite parties can not be faulted for having terminated the services of the petitioner in terms of Para 333 of the Army Regulations, 1987 after giving show cause notice, finding the reply of the petitioner to be untenable nor can the Tribunal be faulted for having dismissed the challenge to the termination order by the petitioner. We have gone through the judgment of the Tribunal and in view of the above discussion we do not find any illegality therein. We accordingly **dismiss** the writ petition.

10. The original record, which we have retained, shall be returned back to Shri Varun Pandey, learned counsel for the opposite parties.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date: - 14.11.2024

R.K.P.