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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10556/2017 & C.M. No.43211/2017(Exemption)**

DINESH KUMAR Petitioner
Through Mr. Sachin Chauhan, Advocate.

versus

GOVT OF NCTD THROUGH THE COMMISSIONER OF
POLICE AND ORS Respondents
Through Mr. Ramesh Singh, Standing
Counsel (Civil) with Mr. Sandeepan Pathak,
Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **28.11.2017**

C.M. No.43211/2017(Exemption)

Allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 10556/2017

1. The present writ petition assails the judgment dated 07.10.2016, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1018/2012, dismissing the O.A filed by the petitioner. The petitioner had approached the Tribunal by way of the aforesaid Original Application, challenging his dismissal from service vide order dated 31.10.2007 as also the order dated 16.03.2011 passed

by the Appellate Authority, affirming the penalty of dismissal imposed upon him.

2. The facts of the case are as follows:-

The petitioner was appointed in the Delhi Police on 01.09.1987, as a Constable and was promoted as a Head Constable in the year 1989. While working as a Head Constable, he was proceeded against departmentally on issuance of a charge-sheet dated 17.05.1997, wherein it was alleged that he had entered into a second marriage with a lady Constable, Ms. Ved Kumari on 08.02.1996, in the Court of Mr. Sudhir Saran Bhatnagar, Addl. Distt. Magistrate (R & R), Registrar of Marriage, Delhi, vide Sl. No. 415/1996 of Form 'B' i.e. marriage certificate dated 08.02.1996, without seeking legal divorce from his first wife, W/HC Ms. Tejwanti. The defaulter had solemnized his marriage with W/HC Ms. Tejwanti much earlier, on 09.10.1989, at her father's house at H No. RZ-28/5, Gali No.13, Indira Park, Palam Colony, Delhi and a male child, Varun Chaudhary was born from out of this wedlock on 01.05.1990.

3. Pursuant to issuance of the aforesaid charge-sheet, wherein the petitioner was alleged to have committed a grave misconduct unbecoming of a Police Officer, a Departmental Enquiry was held against him. Despite several opportunities granted to him, the petitioner did not cooperate in the enquiry proceedings after conclusion of the examination of his first wife, Ms. Tejwanti (PW1). Subsequently, the proceedings were concluded *ex parte* against him. In the course of the enquiry, the petitioner's second wife, Ms. Ved

Kumari was also examined alongwith three other PWs and one court witness.

4. Upon consideration of the prosecution evidence, the Enquiry Officer submitted his report on 31.12.1997, holding that the charge against the petitioner was fully proved. The petitioner was supplied with a copy of the final enquiry report with a direction to submit his representation thereto, if any, within fifteen days, but he failed to do so. Thereupon, the Disciplinary Authority, after going through the Departmental Enquiry files, the findings of the Enquiry Officer and the evidence on record, adduced during the enquiry, held that the charge against the petitioner stood fully proved. Keeping in view the gravity of his misconduct, vide order dated 28.02.1998, the Disciplinary Authority imposed a penalty of dismissal from service on the petitioner.

5. The petitioner unsuccessfully challenged the penalty order in his departmental appeal and revision, whereafter he preferred O.A. No.2100/2005 before the Central Administrative Tribunal. The Tribunal vide its order dated 04.07.2007, came to a conclusion that Rule 16 (XI) of the Delhi Police (Punishment and Appeal) Rules 1980 had not been followed while inflicting the punishment of dismissal on the petitioner as his past punishments had also been considered while imposing the penalty, without the same having been made a part of the charge. As a result, the penalty orders as well as the appellate and revisional orders in the enquiry were set aside, the matter was remanded back to the Disciplinary Authority for a fresh consideration and for passing a fresh penalty order.

6. In compliance with the order of the Tribunal, the petitioner was reinstated in service, but was deemed to be under suspension, since he had been under suspension at the time of his dismissal, in terms of an order dated 27.04.1994, for his involvement in the case of FIR No. 192/1994 under Sections 452/506/34-IPC and 25/54/59 Arms Act, P.S. Nangloi, Delhi. The Disciplinary Authority once again examined the findings of the Enquiry Officer and the other evidence on record and came to the conclusion that the charge framed against the petitioner that he had entered into a second marriage without seeking legal divorce from his first wife, stood fully proved and the same was a grave misconduct and, therefore, his further retention in the Police Force would be undesirable and he was held unfit to serve in a Disciplined Force. The petitioner was again dismissed from service with immediate effect vide order dated 31.10.2007, passed by the Disciplinary Authority.

7. Aggrieved by the dismissal order, the petitioner again preferred an appeal before the Joint Commissioner of Police which was dismissed vide order dated 02.05.2008. It may be noted that the Appellate Authority, while examining the Departmental Enquiry proceedings, had also called the petitioner's first wife, namely Ms. Tejwanti on 08.04.2008, who appeared in person with her son and she had duly corroborated her statement made during the course of the enquiry.

8. The petitioner once again approached the Tribunal by way of O.A No.1743/2008, challenging the Appellate Authority's order on the ground that while rejecting his Appeal, reliance was placed on

extraneous material obtained behind his back and his appeal had been rejected by taking into consideration the statement of his first wife, Ms. Tejwanti who had appeared before the Appellate Authority and given her statement.

9. The Tribunal found merit in the technical ground raised by the petitioner and vide order dated 14.02.2011, while quashing the Appellate Authority's order dated 02.05.2008 on the aforesaid limited ground, remitted the case back for passing a fresh order on the subject, without considering what had transpired when Ms. Tejwanti was called in person.

10. In pursuance to the order dated 14.02.2011 passed by the Tribunal, the Appellate Authority considered the matter afresh and found that the punishment awarded to the petitioner was justified and was commensurate with the gravity of his misconduct and accordingly, dismissed his appeal vide order dated 16.03.2011.

11. In these circumstances, the petitioner approached the Tribunal by filing of O.A.1018/2012 challenging *inter alia*, the order dated 31.10.2007 passed by the Disciplinary Authority dismissing him from service as well as the order dated 16.03.2011, by which the departmental Appeal was rejected.

12. Before the Tribunal, the petitioner had confined his submissions to the question of 'quantum of punishment' and had argued that even if the charges were proved against him the misconduct of bigamy had nothing to do with the discharge of official duties and the Authorities should have taken this fact into account.

13. On the other hand, the respondents while justifying the petitioner's dismissal from service had urged before the Tribunal that bigamy was a misconduct under Rule 21(2) of the Conduct Rules. It was further submitted by the respondents that keeping in view the facts that the petitioner had not even cared to participate in the departmental enquiry and had raised the defence that he had not married Ms. Tejwanti only at the appellate stage as also the fact that he was dismissed from service when he was only thirty years of age with only about 10 years of service, it could not be said that the punishment of dismissal for contracting a second marriage was in any manner excessive or harsh.

14. The Tribunal after taking into account the entire conspectus of the case, did not find any justification for interfering with the penalty imposed on the petitioner and accordingly dismissed the O.A. vide judgment dated 07.10.16. Aggrieved by the impugned judgment passed by the Tribunal, rejecting his O.A., the petitioner has approached this Court by way of the present petition.

15. Mr. Sachin Chauhan, learned counsel for the petitioner urges that the findings of the Enquiry Officer were wholly perverse as he had held the petitioner guilty of contracting a second marriage with Ms. Ved Kumari even though there was no documentary proof of his earlier marriage with Ms. Tejwanti. While drawing our attention to the Enquiry Report, Mr. Chauhan contends that merely because petitioner had accepted his acquaintance and friendship with Ms. Tejwanti, could not be a ground to presume that he had got married to her.

16. Mr. Chauhan further submits that the Enquiry Officer and the Departmental Authorities have failed to consider the petitioner's defence in its proper perspective and that even if the charge of entering into a second marriage is treated as 'proved', against the petitioner, the penalty imposed on him was extremely harsh. His stand is that the extreme punishment of dismissal ought to be inflicted only on a grave misconduct and not in a case involving charges of bigamy.

17. Per contra, Mr. Ramesh Singh, Learned Standing Counsel (Civil) GNCTD while supporting the impugned judgment, relied on the decision of the Supreme Court in the case of *Union of India & Ors. v. P. Gunasekaran* reported as (2015) 2 SCC 610 to contend that it is not for this Court to go into the proportionality of punishment unless it shocks the conscience of the Court. He further submits that the petitioner had contracted marriage with two lady employees of the Delhi Police and had not even cared to appear during the enquiry. He submits that keeping in view the facts of the case, the respondents had rightly arrived at to the conclusion that the petitioner was unfit to be retained in a Disciplined Force and was therefore dismissed from service.

18. Having considered the submissions of the counsels for the parties and examined the record with their assistance, we are of the view that there is absolutely no merit in the present petition. The undisputed facts which emerge from the records are that the petitioner was dismissed from service after a full-fledged Departmental Enquiry was held in which both the wives of the petitioner had been examined.

In fact, a perusal of the Enquiry Report shows that both of them had clearly stated facts about their marriage with the petitioner, as per the Hindu Rights.

19. We find from the record that though the petitioner had initially appeared before the Enquiry Officer, but after the statement of his first wife, Tejawanti had been recorded, wherein she had explicitly stated about her marriage with the petitioner and her abortion in Bhalla Nursing Home in August, 1995, when the petitioner had signed the medical documents as her husband, he had abruptly stopped appearing in the enquiry proceedings. We also find that in her statement, Ms. Tejawanti had in no uncertain terms stated that the petitioner had married a lady constable, Ms. Ved Kumari, without getting a divorce from her. The petitioner had for obvious reasons not cross-examined any of his wives or the other witnesses examined during the enquiry and there is absolutely no justification offered by him as to why he had failed to participate in the enquiry after the initial stage.

20. It is also very intriguing to note that even though learned counsel for the petitioner has urged that the petitioner's marriage with Ms. Tejawanti was not proved in the enquiry, despite that, the petitioner though present before the Enquiry Officer when her statement was recorded, elected not to cross-examine her on any count. On the other hand, he merely made a statement that his name was mentioned in the Ration Card, CGHS Card as well as Nomination Form of Ms. Tejawanti on humanitarian grounds.

21. In view of the above facts and circumstances, we do not find any merit in the submission of the learned counsel for the petitioner

that there was nothing to show that the petitioner had married Ms. Tejawanti. In our view, once there was a categorical statement made by Ms. Tejawanti that the petitioner had married her, which statement stood corroborated by the fact that the petitioner's name was mentioned in the Ration Card, CGHS Card and Nomination Form of Ms. Tejawanti, the plea that there was nothing to prove the marriage of petitioner with Ms. Tejawanti, is liable to be rejected outright.

22. In this context, we may refer to the following paras 20 & 21 of the judgment of the Supreme Court in the case of **Union of India & Ors. v. P. Gunasekaran** (*supra*), on which reliance has been placed by the learned counsel for the respondents:-

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.

21. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in

service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions including B.C. Chaturvedi v. Union of India, Union of India and another v. G. Ganayutham, Om Kumar and others v. Union of India, Coimbatore District Central Cooperative Bank v. Employees Association, Coal India Limited v. Mukul Kumar Choudhuri and the recent one in Chennai Metropolitan Water Supply.”

23. We are of the view that the misconduct committed by the petitioner is most unbecoming of a member of a disciplined force and in the facts of the present case there is no force in the submissions of the learned counsel for the petitioner that the penalty of dismissal awarded to the petitioner, is disproportionate. We are unable to concur with the said submission and do not find any disproportionality in the penalty awarded to the petitioner. As a result, we do not propose to interfere with the penalty imposed on the petitioner.

24. The impugned judgment dated 07.10.2016 is affirmed and upheld. The writ petition is dismissed *in limine* alongwith pending application, with no order as to costs.

REKHA PALLI, J

HIMA KOHLI, J

NOVEMBER 28, 2017/sr