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

+ W.P.(C) 1289/2018

SANJAY KUMAR

..... Petitioner

Through: Ms.Shashi Kiran, Mr.Sujit
Kumar Jha & Dr.Shatish
Chandra, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Rajesh Kumar & Mr.Nikhil
Kumar, Advocates with
Mr.Devendra Singh, AC/CISF.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

12.02.2018

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1. The petitioner herein was recruited as a Constable (Driver) in the Central Industrial Security Force (CISF). In a Departmental inquiry conducted against him for concealing the factum of his first marriage with Anjali on 09.12.2012 and entering into the second marriage with Meenu on 12.05.2013 during the life time of his first wife, he was found guilty of the charge levelled against him by the Department. Vide order dated 23.04.014, the Disciplinary Authority i.e. the Commandant, CISF, Unit FSTPP, Farakka had imposed a penalty of 'removal from service' on the petitioner.

2. The petitioner sought his statutory remedy against the order dated 23.04.2014 by filing an appeal which was dismissed by the Appellate Authority i.e. DIG, CISF vide order dated 21.08.2014 and the revision petition preferred by the petitioner also met the same fate.

3. The petitioner has invoked the writ jurisdiction of this Court with a prayer to quash the order dated 23.04.2014 passed by the Disciplinary Authority, order dated 21.08.2014 passed by the Appellate Authority as well order dated 28.04.2015 passed by the Revisional Authority and also to issue directions to the respondent/CISF to reinstate him.

4. The facts in the instant case are not in dispute. The petitioner has admitted having entered into a first marriage with Anjali on 09.12.2012 and just after five months i.e. on 12.05.2013, he entered into a second marriage with Meenu. He has also admitted that the factum of his marriage with Anjali on 09.12.2012, was not intimated to the respondent/CISF. While informing the respondents about his marriage with Meenu on 12.05.2013, he did not mention that this was his second marriage or that he has obtained any divorce from his first wife, purportedly through the 'Panchayat'.

5. Ms.Shashi Kiran, learned counsel for the petitioner has made the following submissions :

(i) The petitioner belongs to a rural area where such custom like divorce through Panchayat is prevalent and under the bonafide belief that he had been divorced, he had married a second time with Meenu and this fact was duly informed to the Department.

(ii) The divorce by the Panchayat should have been considered by

the Department as a valid divorce, hence it was not a case of marrying a second time during the life time of first wife, Anjali.

(iii) The settlement between the petitioner and his first wife Anjali which took place at the Mediation Centre, Ghaziabad was also accepted by the Court. Hence it was not a case of marrying a second time, during the life time of the first spouse.

(iv) Learned counsel for the petitioner while conceding the factum of the petitioner marrying twice in the above circumstances, has submitted that the penalty of 'removal from service' is very harsh and disproportionate to the alleged misconduct. Hence, the petitioner may be directed to be reinstated in service.

6. Mr.Rajesh Kumar, learned counsel for the respondent/CISF has submitted that the petitioner did not inform about his first marriage with Anjali on 09.12.2012. He also did not inform the Department about his alleged divorce from his first wife through a 'Panchayat'. The petitioner filled a declaration form and other nomination forms on 19.08.2013 for purposes of his service record wherein he mentioned the name of Meenu as his wife without disclosing that she was his second wife or declaring the status of his first marriage. Thus, the petitioner concealed the factum of his first marriage and also that he had married a second time during the life time of his first wife. It has also been contended that under the Hindu Marriage Act, 1955, the petitioner could have sought divorce from his first wife only after expiry of a period of one year and that too by obtaining a decree of divorce. Therefore, he could not have legally married Meenu on 12.05.2013 i.e. just after five months of his first marriage. Learned

counsel for the respondent submits that during the departmental inquiry, the petitioner had informed that a compromise between him and Anjali (his first wife) took place before the Mediation Centre, Ghaziabad on 26.07.2013 wherein it was agreed that both the parties shall not initiate any legal proceedings against each other with regard to the marriage. The said compromise was affirmed by Smt. Anjali and her father Sh. Rishipal Singh but when the Inquiry Officer had enquired as to whether the compromise took place after his second marriage, then the petitioner had raised a plea of the decision of the 'Panchayat' dated 11.03.2013, in his defence.

7. The petitioner, who was member of a disciplined force, is governed by the CISF Act, 1968 and CISF Rules, 2001. Section 18 of the CISF Rules, 2001 provides as under:-

"18. Disqualification - No person, -

(a) who has entered into or contracted a marriage with a person having a spouse living; or

(b) who, having a spouse living, has entered into or contracted a marriage with another person, shall be eligible for appointment to the Force;

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule."

8. Though in the Departmental inquiry, the petitioner had claimed that his first wife was suffering from some kind of mental disorder due to which he had to seek divorce from her, the question that arises is as

to why had he failed to inform the factum of his marriage with Anjali on 09.12.2012 to the respondents, while filling the necessary declaration form and other nomination forms. In case Anjali was suffering from any kind of mental disorder, she being dependent on the petitioner for purpose of availing medical treatment, ought to have been shown as his dependent.

9. The factum of entering into a marriage with Anjali on 09.12.2012 being an admitted fact, the conduct of the petitioner in failing to inform the Department about his first marriage and his entering into a second marriage with Meenu on 12.05.2013 i.e. even before the expiry of the statutory period of one year for seeking divorce under the Hindu Marriage Act, 1955, has clearly violated the Conduct Rules applicable to him. So far as the marital relationship between the parties is concerned, and the purported 'Panchayati' divorce on which his first wife even denied her signatures, the same is of no consequence in law. It was nothing but a cover up operation undertaken by the petitioner with an attempt to legalise his second marriage with Meenu.

10. The contention raised on behalf of the petitioner that there was an agreement before the Mediation Centre, Ghaziabad which was accepted by the Court, does not come to his rescue. The mediation settlement was in a case under the Domestic Violence Act and any settlement in that case cannot be termed as a decree of divorce.

11. The finding of the respondent that the petitioner had contracted a second marriage during the lifetime of his first wife, is based on evidence made available in the course of the disciplinary proceedings.

Rather, the factum of both the marriages has been duly admitted by the petitioner. Even though the petitioner has asserted that the first marriage was dissolved, no particulars of a divorce decree are forthcoming.

12. In the case Chairman & Managing Director, VSPT & Ors. vs. Goparaju Sri Prabahara Hari Babu reported as **2008 5 SCC 56**, the Apex Court has held that a well reasoned order of the Department cannot be interfered with on the basis of sympathy or sentiment. When the procedural formalities have been adhered to by the authorities, the Court cannot ordinarily disturb the penalty and in such a case, the Court has only limited jurisdiction in exercise of judicial review over such a penalty.

13. Once a charge of second marriage is proved against a member of a disciplined force and it is further evidenced that the second wife was not made aware of the first marriage, the punishment of dismissal or removal cannot be said to be shocking in the light of the misery brought into the lives of at least two women by the petitioner. There is no basis for the petitioner's challenge that he has been harshly dealt with or that the authorities rushed to any finding without following due procedure. As indicated above, the petitioner stands condemned by his own statement in course of the inquiry and given his admission of the first marriage and the evidence regarding the purported subsequent marriage, the petitioner has been rightly thrown out of the CISF.

14. The penalty of 'removal from service' cannot be termed as disproportionate for the reason that the petitioner is governed by the

CISF Act, 1968 and CISF Rules, 2001 and for his misconduct, he could not have been retained as a member of the Force.

15. The petition is dismissed as being devoid of merits.

PRATIBHA RANI, J.

HIMA KOHLI, J.

FEBRUARY 12, 2018

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