

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1221 of 2021**

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No. 123901477 Constable (G.D.) Bindeshwar Kumar (C) Gulm, 69 the Battalion-Border Security Force Choup, Jaipur (Rajasthan), Son of Rajendra Prasad @ Rajendra Ravidas, aged about 32 years, resident of Village- Mahuli, Post- Office- Suitha, P.S.- Parsa Bazar, District- Patna State Bihar Pin Code- 804453.

... .. Petitioner/s

Versus

1. The Union of India through the Principal Secretary, Home Department, Government of India, New Delhi.
2. The Director, Home Department, Government of India, New Delhi.
3. The Director General, Border Security Force, Block No. 10, CGO Complex, Lodhi Road, New Delhi 110003.
4. The Inspector General, Frontier HQ BSF Jammu, Government of India Ministry of Home Affairs (M.H.A.) Paleura Camp, Jammu and Kashmir- 181124.
5. The Commandant 69 Battalion Border Security Force, Choup, Jaipur (Rajasthan).
6. The Deputy Commandant 69 th Battalion Border Security Force, Choup, Jaipur (Rajasthan).

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate  
For the Respondent/s : Mr. Ram Anurag Singh, CGC

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**  
**Date : 29-04-2025**

Heard the parties.

2. The petitioner is aggrieved with the order, as contained in Memo No. 4503/East-IV Jammu/BSF/2019/8199-8207 dated 27.05.2020, issued under the signature of the Inspector General, Frontier Headquarter, BSF Jammu, Government of India, whereby the appeal preferred by the petitioner against the Order No. BSF 3538-55 dated 15.03.2019



came to be rejected and the order passed by the disciplinary authority under the provisions of Section 11(2) of the BSF Act, 1968 read with Rule 26 of BSF Rules, 1969 approved by the competent authority, came to be affirmed and the petitioner was made to retire from service with effect from 15.03.2019 on the ground of unsuitability without any pensionary benefits.

3. The short facts which led to filing of the present writ petition are that the petitioner was duly appointed in BSF on 19.01.2012 as Constable (GD) and after completion of training he reported in 69 Battalion of BSF on 29.12.2012. While the petitioner was discharging his duty as Constable (GD) he solemnized marriage with one Smt. Rekha Kumari, daughter of Shri Om Prakash Mishra at Shri Ram Janki Mandir, Sonari Mandir, Pethiyapar, Danapur Cantonment, Bihar on 01.09.2014 despite she was already married with Shri Chandan Kumar Mishra. The aforesaid fact led to filing of a complaint, bearing Complaint Case No. 822(C) of 2015, by said Chandan Kumar @ Chandan Mishra, claiming himself as the first husband of Rekha Kumari, against the petitioner and others under Sections 494, 495, 496, 497 and 399/34 of the Indian Penal Code. It is the case of the petitioner that when he came to know that Smt. Rekha Kumari had already married with Shri Chandan Kumar



Mishra and this fact has never been disclosed to him, a panchayati has taken place where the petitioner obtained divorce from Smt. Rekha Kumari in presence of their respective parents and all the panchayat members. Subsequently the petitioner solemnized his marriage to Smt. Shweta Kumari and submitted an application for nominating her name in the service record without disclosing the fact of his first marriage.

4. The Court of Inquiry had conducted and the petitioner has been found blameworthy for marrying with a person having spouse living and further marrying again during the lifetime of his first wife without decree of divorce concealing the fact of this case from the Department. In the aforesaid premise, the recommendation has been made to initiate disciplinary proceeding against him under the provisions of the BSF Act and the Rules. The petitioner was served with a show cause as to why his service should not be terminated under Rule 22 of BSF Rules, 1969. In response to the show cause notice, the petitioner submitted his reply along with a copy of the matrimonial case No. 844 of 2018 filed before the learned court of Principal Judge, Family Court, Patna on 25.07.2018. In the matrimonial case the petitioner claimed that the marriage was solemnized on the assurance given by Smt. Rekha Kumari



that she had already taken divorce, but later on after having come to know that there is no separation; immediately in presence of all the family members and the public representatives of the panchayat, both the petitioner and Smt. Rekha Kumari untied their relationship from each other and only thereafter the petitioner has solemnized marriage with Smt. Shweta Kumari, who is only wedded wife. The petitioner filed the aforesaid petition for a declaration to hold the aforesaid marriage as void.

5. The show cause reply of the petitioner was examined by the concerned respondents and direction has been issued to take action under the provisions of Rule 26 of BSF Rules, 1969 and accordingly he was issued another show cause notice vide letter No. 305 dated 22.02.2019. The petitioner immediately submitted his reply. However, the same was found devoid of any merit in the light of the existing rules and the evidence recorded in the Court of Inquiry which led to passing of the impugned order dated 15.03.2019 under Section 11(2) of BSF Act, 1968 read with Rule 26 of BSF Rules, 1969 and directed the petitioner to retire from service with effect from the date of issuance of the order without any pensionary benefits.

6. The petitioner being aggrieved submitted his appeal



before the DIG, BSF, Bikaner. In the meantime Battalion of the petitioner moved under Jammu Frontier, the record was sent to the Headquarter BSF Jammu, who being the competent authority considered his case and finally rejected the appeal. The order of appeal came to be challenged by the petitioner in C.W.J.C. No. 14466 of 2019. The aforesaid writ petition finally came to be disposed of with liberty to the petitioner to prefer appeal on merit. Accordingly, it was duly considered afresh and on being found devoid of any merit further been rejected vide order dated 27.05.2020, which is also impugned herein.

7. Learned Advocate for the petitioner contended that the marriage of the petitioner with Smt. Rekha Kumari had no sanctity under the law as it was taken place by suppressing the fact of earlier marriage and thus the same has not been given any recognition by the family members leading to consensus divorce in the Panchayat. However, upon being served with the show cause notice the petitioner thought it proper to get the marriage annulled from the competent court and as such the petitioner preferred Matrimonial Case No. 844 of 2018 seeking a declaration to hold it void. Referring to the deposition of Smt. Rekha Kumari as was recorded by the Family Court, he further submits that the contention of the petitioner that the marriage



was solemnized by suppressing the fact of earlier marriage with one Shri Chandan Mishra and they were blessed with a child was duly accepted by Smt. Rekha Kumari. On being no resistance on the part of Smt Rekha Kumari and any family members finally Matrimonial Case No. 844 of 2018 came to be allowed vide order dated 13.07.2021.

8. Taking this Court through the order of the Principal Judge, Family Court, Patna dated 13.07.2021 it is further contended that the family Court has made specific observation that from scrutinizing the evidences orally as well as documentary and other materials produced on behalf of the parties, the court came to the conclusion that opposite party of this case was a married woman prior to solemnization of present marriage with the petitioner and the opposite party fraudulently obtained consent with the petitioner for marriage by suppressing the material facts. Thus, the Family Court declared the marriage solemnized on 01.09.2014 as null and void; and decree of nullity in favour of the petitioner came to be passed. The respondent authorities failed to consider the aforesaid fact that it is a case where the petitioner has not voluntarily and knowingly solemnized marriage with Smt. Rekha Kumari and in fact Shweta Kumari is the only legally wedded wife and the couple



also blessed with two children. Since the petitioner was not knowing the aforesaid fact and he himself was cheated, compelling the petitioner to retire with effect from 15.03.2019 without any pensionary benefits is wholly unsustainable and fit to be set aside.

9. Mr. Ram Anurag Singh, learned Central Government Counsel representing the respondents has contended that in the Court of Inquiry the petitioner was found blameworthy for marrying with the person having spouse living and further the petitioner solemnized another marriage during the lifetime of his first wife without legal decree of divorce concealing the facts of the case from the Department. The so called divorce through panchayat has no legal sanctity. It was incumbent on the petitioner to verify the factum of divorce of first wife before marriage and panchayat is not an authority to dissolve marriage. Hence, the authority took a decision to proceed against the petitioner under the provisions of Rule 26 of BSF Rules, 1969. It is further contended that as per the Government of India decision under Rule 21 of CCS (Conduct) Rules 1964, “even a marriage which is legally null and void by reason of there being a spouse living at the time of marriage would disqualify the person concerned for appointment to



Government Service.” Hence, even if his prayer to declare his first marriage void with Smt. Rekha Kumari is allowed and their marriage is annulled, the petitioner has no benefit out of it in present matter of his retirement on the grounds of unsuitability. The petitioner entered into the second marriage with Smt. Shweta Kumari during life time of the first wife without legal divorce; moreover as per the provisions of BSF Rule 7 read with Rule 21(2) of CCS (Conduct) Rules, 1964, and on being found unsuitable under the Rule 26 of BSF Rules, 1969 as also the evidence recorded in the Court of Inquiry proceeding, the impugned order came to be passed.

10. It is lastly submitted that BSF being a disciplined Force of Union of India there is a set law in the force for all BSF personnel from bottom to top and no one whatsoever is his status, can be over and above the law of the force. Any person committing any offence is liable to be charged under BSF Act, 1968. The disciplinary proceedings drawn in this case are fully justified and legal under the provisions of the law. Hence, prayer has been made for rejection of the present writ petition.

11. Having considered the lengthy submissions advanced on behalf of the learned Advocate for the respective parties and on perusal of the materials available on record one-



thing, which is evident is that the petitioner had initially solemnized marriage with one Smt. Rekha Kumari on 01.09.2014, despite she was married with Shri Chandan Kumar Mishra, who having come to know about this marriage, filed Complaint Case No. 822 (c) of 2015 against the petitioner and others. So far the legal position in terms of the statutory prescription of the Hindu Marriage Act, 1955 is concerned, it clearly stipulates that any marriage solemnized between any two Hindu's, if either of the parties has a spouse living at the time of the marriage shall be null and void and may, on a petition presented by either of the parties thereto be so declared by a decree of nullity.

12. There is no iota of confusion with respect to the position of law and the stand taken by the respondent Border Security Force that any decision of the Panchayat giving order of divorce between a couple has no legal sanctity. However, in the case in hand, the contention raised by the petitioner that the marriage, in question, was solemnized without disclosing the fact of earlier marriage, already solemnized with Shri Chandan Kumar Mishra; the contention of the petitioner has not been disputed, rather admitted by Smt. Rekha Kumari that at the time of marriage with the petitioner, she did not disclose this fact and



in fact based upon this finding, when the petitioner left with no option, filed Matrimonial Case No. 844 of 2018, the Principal Judge, Family Court, Patna vide its order dated 13.07.2021 allowed the Matrimonial case and declared the marriage solemnized with Smt. Rekha Kumari as null and void. The learned Principal Judge, Family Court, Patna has made a specific observation that from scrutinizing the evidences orally as well as documentary and other materials produced on behalf of the parties, the Court came to the conclusion that Opposite Party (Rekha Kumari) was already a married woman prior to solemnization of present marriage and fraudulently obtained consent with the petitioner for marriage by suppressing the material facts.

13. In the light of the aforesaid facts, now coming to Rule 7 of the Border Security Force Rules, 1969, which deals about disqualification. It would be pertinent to observe that no person who has entered into or contracted a marriage with a person having a spouse living, or who, having a spouse living, has entered into or contracted a marriage with any person, shall be eligible for appointment in the Force, with the proviso, if the Central Government is satisfied, that such marriage is permissible under the personal law applicable to the parties,



exempt any person from the operation of this rule, if there are other grounds for so doing.

14. Bare reading of the aforementioned Rule, it would be evident that the subject disqualification is to such an extent that it forbids a person to be appointed in the force and/or in fact if a person is facing such charge, he would become ineligible for appointment.

15. True it is that Rule 21 of the Central Civil Services (Conduct) Rules, 1964 specifically prohibits that no Government servant shall enter into, or contract, a marriage with a person having a spouse, however, the question put forth before this Court is as to whether extreme punishment of retirement without any benefit, which is akin to removal from service was rightly called for in the instant case. In the case, in hand, the marriage of the petitioner with Rekha Kumari was solemnized in the year 2014, while the petitioner was working on the post of constable and after having come to know that said Rekha Kumari had already married with said Chandan Kumar Mishra, he separated the conjugal tie initially at the social level and later on got a decree of divorce from a competent court; nonetheless, before obtaining a legal and valid decree of divorce, the petitioner has solemnized marriage with Shweta



Kumari and this fact has been disclosed to all the official concerned.

16. The power of the authority concerned leading to imposition of the punishment under the provision of Section 11(2) of Border Security Force Act, 1968 read with Rule 26 of the Border Security Force Rules, 1969 retiring the petitioner from service with effect from 15.03.2019 on the ground of unsuitability without any pensionary benefit in the opinion of this Court is disproportionate to the charges proposed to be proved. Inasmuch, as Rule 26 of the B.S.F. Rules, empowers the authority to hold a person unsuitable for the post and thereby inflicted with the punishment of retirement. The very reading of the provisions, which is akin to the provision of compulsory retirement on account of unsuitability empowering the authority concerned to take a decision only after providing opportunity of showing cause and it may exempt, if the authority considers it to be impracticable or inexpedient in the interest of security of the State, but it does not talk and empower an authority to withhold the entire retiral benefits.

17. The identical issue came up for consideration before the Division Bench of the Kerala High Court in the case of **Union of India & Others Vs. Sandeep Pandey, [2020 SCC**



**OnLine Ker. 578]** wherein the challenge was made to the decision passed by the learned Single Judge granting pension to the writ petitioner under Rule 49(2) of the Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as 'the Rules, 1972'), inasmuch as the petitioner was retired under Rule 26 of the BSF Rules, 1969.

18. The question posed before the learned Division Bench was as to whether the retirement under Rule 26 of the BSF Rules is a penalty or at least a compulsory retirement as understood by Rule 40 and whether it dis-entitles the retiree from pension under Rule 49(2) of the Rules, 1972. The learned Division Bench has observed that Rules 25, 26 and 27 stand apart, in so far as they being provisions enabling the authorities to retire sub-ordinate officers either on the grounds of physical unfitness or on the ground of unsuitability. This does not contemplate an enquiry and it is purely on the discretion of the authority, who considers the service of the employee. In the said case also, Rule 26 was invoked insofar as the writ petitioner being retired on the grounds of unsuitability.

19. The learned Court observed that the writ petitioner was unauthorized absent and thus the same was held to be a misconduct, but as the authorities have invoked Rule 26, which



is not punitive in nature and character; the authorities rightly did not impose a harsh punishment of retirement with or without pension.

20. The learned Division Bench finally held in its penultimate paragraph as follows:

*“9. In such circumstances, when retirement is made as per Rule 26, the retiree would be entitled to pension in accordance with the Pension Rules, for reason of the retirement being one in accordance with the Rules, as distinguished from a punitive cessation of service with full and part pension, which is contemplated under Rule 40. We uphold the judgment of the learned Single Judge, finding the writ petitioner to be entitled to minimum pension under Rule 49(2) of the Pension Rules.”*

20. Similarly in identical fashion, the learned Division Bench of Delhi High Court in the case of **Dinesh Kumar Vs. Union of India & Ors., [2010 SCC OnLine Del 875]** while considering the provision of Rule 26 of the BSF Rules, 1969 has held that Rule 26 empowers the Commandant to retire such enrolled persons of the force whose retention is found to be unsustainable in the force and thus the same would not impact his right to receive his pension for the service rendered by him..

21. This Court is not oblivious of the fact that while



exercising power of judicial review, the Court is only concerned with the decision making process and not with the decision. However, in view of the aforementioned settled legal position as also the facts discussed hereinabove and the provisions of law, taking shelter of which the petitioner has been inflicted with the punishment of retirement without any pensionary benefits, requires to be revisited only on the point of punishment, keeping in mind the fact, the contention of the petitioner that the first marriage was performed under misrepresentation and the concealment on the part of Rekha Kumari finds corroborated by the finding of the learned Principal Judge, Family Court, which led to passing of the decree of annulling the marriage and declaring it as void.

22. In view thereof, this Court is hereby set aside the impugned order, as contained in Memo No. 4503/East-IV Jammu/BSF/2019/8199-8207, dated 27.05.2020 and relegate the matter to the concerned authority to consider it afresh and pass an appropriate order of punishment in accordance with law, in the facts and circumstances of this case.

23. It is expected that this exercise must be completed preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.



24. The writ petition stands allowed to the extent mentioned hereinabove.

25. Pending application(s), if any, also stand(s) disposed of.

**(Harish Kumar, J)**

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