

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

RESERVED ON: 18.03.2025

DELIVERED ON: 26.03.2025

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

W.P.A. 13129 OF 2021

WITH

CAN 1 OF 2023

RANJIT GHOSH

VERSUS

UNION OF INDIA & OTHERS

Appearance:-

Mr. K B S Mahapatra, Adv.

Mrs. Arifa Sultana, Adv.

Mr. Aditya Shit, Adv.

.....For the Petitioner

Mr. Dhiraj Kr. Trivedi, Ld. DSGI

Mrs. Sarda Sha

.....For UOI

JUDGMENT

Gaurang Kanth, J.

1. The Petitioner has preferred the present writ Petition seeking quashing and setting aside of the Memorandum of Charge dated 09.07.2021 issued by the Commandant, CISF Unit GRSEL (K).

2. The relevant facts leading to the filing of the present writ petition are as follows:
3. The Petitioner is an employee of Central Industrial Security Force (CISF).
4. On 13.01.2021, a complaint was received from one Ms. Tumpa Dey (Ghosh) addressed to Commandant GRSEL, Kolkata. In the said complaint, it was stated that the marriage between the petitioner and Ms. Dey was solemnized on 14.10.2018 in presence of the family of both the parties, however, after the said marriage, the petitioner and his family started torturing her and not maintaining her properly. In order to substantiate her allegations, she submitted various documents including the photographs of the marriage ceremony.
5. As per the record maintained by the respondent, Ms. Ria Kar was his first wife and matrimonial dispute between the petitioner and Ms. Ria Kar is pending before the competent court.
6. As per Rule 18 of the CISF Rules, 2001, *'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.'*
7. On receipt of the said complaint dated 13.01.2021, the Respondent conducted a preliminary enquiry.
8. The allegation against the petitioner was that before grant of divorce from his first wife Ms. Ria Kar, the petitioner contracted another marriage with

Ms. Tumpa Dey on 14.10.2018 and thus violated the provision of Rule 18 of the CISF Rules, 2001.

9. In view of the evidence collected during the preliminary investigation, the Commandant, CISF Unit GRSEL, Kolkata issued a Charge Memorandum No. V-15014/Maj-01/RG/Dis/GRSEL(K)/2021/1074 dated 09.07.2021 under Rule 36 of CISF Rules-2001 on the following charges:

“That No.102859753 Constable/GD Ranjit Ghosh of CISF Unit GRSEL, Kolkata entered into a second marriage with Thumpa Dey on 14.10.2018 when he was having a spouse living namely Mrs. Ria Kar and mutual divorce case was pending with her at District Judge Dakshin Dinapur at Balurghat in violation of rule 18 of CISF Rules 2001. Thus he has committed an act of bigamy and unbecoming of a disciplined member of armed force of the Union. Hence the Charge.”

10. The petitioner replied to the said charge memo vide reply dated 18.07.2021 denying the allegations. In view of the same, disciplinary authority, vide order dated 23.07.2021, appointed Inquiry Officer and Presenting Officer for conducting the departmental enquiry and proceeded with the enquiry. The Inquiry Officer issued notice directing the Petitioner to appear before the enquiry officer.
11. Being aggrieved by the initiation of the disciplinary proceedings, the Petitioner preferred the present writ petition.
12. It is to be noted that the present matter came up for admission hearing before this Court on 08.09.2021. After hearing the parties, this Hon'ble

Court was pleased to direct that *'the disciplinary proceedings as against the petitioner shall continue but the final order shall be published only after obtaining the leave of this Court'*. In view of the interim order passed by this Court, the Respondent concluded the enquiry and sought the permission of this Court to publish the final order vide CAN No.1.

13. The respondents filed their Affidavit in opposition and the Petitioner filed their reply Affidavit.
14. Today with the consent of all the parties, the present writ petition is taken up for hearing.

Submissions on behalf of the Petitioner

15. Learned Counsel for the petitioner submits that the article of charge is not as per the CISF Act and Rules and hence the same is beyond the scope of disciplinary proceedings. Learned Counsel further submits that marriage, divorce, bigamy etc. are the subject matter of Hindu Marriage Act and hence jurisdiction is vested with the civil Court and the same cannot be adjudicated by the disciplinary authority.
16. Learned Counsel for the petitioner further submits that the disciplinary proceedings are summary proceedings and decided on the basis of the preponderance of probability whereas the allegation of bigamy has to be proved conclusively. The allegation of bigamy cannot be decided in departmental proceedings.
17. According to the learned counsel for the petitioner, the word 'misconduct' is not defined in the CISF Act or Rule. In the service regulations if an act or

omission is not prescribed as misconduct, it is not open for the employer to fish out some conduct as misconduct. In order to buttress his arguments, Learned Counsel for the Petitioner relies upon ***Rasiklal Vaghajibhai Patel Vs Ahmedabad Municipal Corporation reported as AIR 1985 SC 504***, and ***M/s Glaxo Laboratories (I) Ltd Vs Presiding Officer, Labour Court, Meerut reported as 1984 (1) SCC 1***.

18. With these submissions, learned Counsel for the petitioner submits that the Charge Memo issued against the Petitioner is without jurisdiction and hence prays for the quashing of the Charge Memo dated 09.07.2021.

Submission on behalf of the Respondent

19. Learned Counsel for the respondent submits that the petitioner is a member of Central Armed Force and the allegation against him is that he violated Rule -18 of CISF Rules 2001. In view of the same, the respondent conducted a preliminary enquiry into the allegations leveled against the Petitioner.
20. Learned Counsel for the respondent further submits that since the petitioner violated the service rules applicable to him, the respondent is well within their right to initiate the disciplinary proceedings. The allegation against the petitioner is very serious in nature and hence being the employer, the Respondent needs to enquire into it. The petitioner shall have full opportunity to present his case before the disciplinary authority.
21. Learned Counsel for the respondent further submits that in consonance with the interim order dated 08.09.2021 passed by this Court, the

Petitioner also participated in the disciplinary proceedings, and same is already concluded.

22. Learned Counsel for the respondent relies on ***Khursheed Ahmad Khan Vs State of Uttar Pradesh*** reported as **2015 (8) SCC 439** and ***Mehatru Baddhal alias Mehatru Ram Baddhal Vs State of C.G & Ors*** reported as **2019 SCC Online Chh 258** to substantiate his arguments.
23. With these submissions, Learned Counsel for the respondent prays for dismissal of the present writ Petition.

Legal Analysis

24. This Court had heard the arguments advanced by the learned Counsel for the parties and examined the relevant documents.
25. It is well settled principle of law that in matters involving departmental enquiry, the scope of judicial review is very limited. In normal circumstances, a charge sheet is not quashed prior to the conducting of an enquiry on the ground that the facts stated in the charge sheet are erroneous. To determine the correctness or truth of the charge is the function of the disciplinary authority. The judicial review at the stage of charge sheet is available only if there is a patent illegality in the issuance of the charge sheet which goes to the root of the matter. In any case, judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Judicial review is not directed against the decision but is confined to the decision-making process. The purpose of

judicial review is to ensure that the individual receives fair treatment before the disciplinary authority.

26. This being the limited scope, this Court now proceeds to examine the facts of the present case.
27. The Petitioner in the present case is challenging the charge sheet issued by the disciplinary authority on the ground that the Respondent issued the said charge sheet sans jurisdiction as the disciplinary authority has no jurisdiction to decide the validity of the marriage. According to the Petitioner, the said jurisdiction is solely vested with a civil court. Hence without deciding the issue of validity of the Petitioner's alleged second marriage, the Respondent cannot decide the charges leveled against him.
28. The Petitioner in the present case is an officer of the disciplined and uniformed force, CISF. As per Rule 18 of the CISF Rules, 2001, *'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.'* Hence to become eligible for an officer of CISF, one has to abide by Rule 18.
29. In the present case, the allegation against the Petitioner is that he contracted second marriage during the subsistence of his first marriage. If the said charges are proved against the Petitioner, he will not be eligible to become a member of the CISF. In view of the serious nature of allegations

leveled against the Petitioner, it is important for the Respondent to ascertain the truth of the allegations.

30. The intention of the disciplinary proceedings initiated by the Respondent is not to examine the validity of the Petitioner's marriage. The intention is to find out whether the Petitioner violated Rule 18 of the CISF Rules or not. Hence it is wrong to suggest that the Respondent has no power to conduct an enquiry to determine the correctness of the allegations made against its employees. Whether the said allegation is true or not is for the disciplinary authority to determine, and in order to arrive at such a finding, a disciplinary enquiry must be conducted.
31. Since the Respondent authority has jurisdiction to examine whether the Petitioner violated Rule 18 of the CISF Rules, 2001, there is no substance in the challenge raised by the Petitioner.
32. Learned Counsel for the Petitioner relies upon the Judgment of Hon'ble Supreme Court in **Rasikalal (Supra) & Glaxo Laboratories (Supra)** to contend that unless in the certified standing order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. This Court is in respectful agreement with the said legal proposition laid down by Hon'ble Supreme Court. In the present case, Rule 18 of the CISF Rules is a mandatory precondition to be fulfilled by an employee to become a member of the said

force. Hence if there is an allegation to the effect that an employee violated the said provision, certainly that is a misconduct as per the service regulations. Accordingly, the respondent is well within their right to initiate disciplinary proceedings against the Petitioner.

33. This Court also notes that the Hon'ble Supreme Court on many occasions upheld the disciplinary proceedings initiated against the employee for contracting second marriages. **(UOI Vs KG Soni** reported as **2006 (6) SCC 794, Khurshid Ahmed Khan Vs State** reported as **2015 (8) SCC 439**).
34. In view of the detailed discussions herein above, this Court is of the considered view that no ground is made out for quashing of the Chargesheet dated 09.07.2021 and hence the present writ Petition is dismissed. Since the Respondent has already concluded the disciplinary proceedings, they are allowed to publish the final order.
35. It is clarified that this Court has not examined the merit of the allegations raised against the Petitioner in the said Charge sheet dated 09.07.2021. It is open for both the parties to raise their respective pleas before the appropriate forum at an appropriate stage.
36. With these observations, the present writ petition is dismissed.

(Gaurang Kanth, J.)

Sakil P.A.