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**(2002) 05 GAU CK 0004**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 3217 of 2001**

Dhireswar Baishya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 14-05-2002

**Acts Referred:**

Central Civil Services (Conduct) Rules, 1964 — Rule 21

**Citation :** (2002) 3 GLT 66

**Hon'ble Judges :** P.C. Phukan, J

**Bench :** Single Bench

**Advocate :** B.K. Ghose and N. Chakraborty, for the Appellant; C.G.S.C., for the Respondent

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## Judgement

P.C. Phukan, J.—Heard Mr. Narayan Chakraborty, learned Counsel for the Petitioner and also the learned Central Govt. Standing Counsel appearing for the Respondents.

2. After passing HSLC examination the Petitioner was appointed as a constable in Group Centre, SSB, Bongaigaon by order dated 9.3.94. That since the date of his joining he has been serving his duty without blemish. That the Respondent No. 5, Commandant, Group Centre, Bongaigaon by the impugned order dated 1.7.99 removed him from service w.e.f. 1.7.99 for conducting 2nd marriage without obtaining prior permission of the competent authority having his spouse alive. Annexure-I is the impugned order. The Petitioner preferred an appeal before the Respondent No. 3, Divisional Organiser, SSB, North Assam Division, Tezpur who by order dated 12.2.2001 dismissal the appeal and confirmed his removal order.

3. It is submitted on behalf of the Petitioner that the so called 2nd marriage was solemnised at a Mandir under compulsion to save his life and ultimately the marriage with the Petitioner's first wife was dissolved by a decree of divorce by the District Judge, Sonitpur on 30.11.2000 passed in T.S. (D) No. 24/2000.

4. It is also submitted that the punishment imposed to the Petitioner is too

harsh. It is also highlighted that the first wife Baby Baishya lived with the Petitioner only for four days and although the said marriage was not solemnised, but because of the law the Petitioner filed divorce case to avoid future complications. The Petitioner paid Rs. 20,000/- as lumpsum in Misc. Case No. 22/99 filed by his first wife against him. It is submitted that his alleged 2nd marriage has not adversely affected the quality of his service as a constable of SSB. Having given my anxious consideration to the rival contentions made by the learned Counsel for the Petitioner and learned Central Government Standing Counsel, I am inclined to think that the penalty of removal from service imposed on the Petitioner is not commensurate to the alleged mis-conduct of the Petitioner. No criminal prosecution was launched against him. He paid a sum of Rs. 20,000/- to his first wife. In this regard learned Counsel for the Petitioner has referred to a Division Bench decision of this Court in Trilok Singh Rawat Vs. Union of India and Others, . In that case the Petitioner challenged his dismissal from the Post of Asstt. Sub-Inspector in the Central Reserve Police Force. Under Rule 21 of the Central Civil Service (Conduct) Rules, 1964 on the ground that the performed a second marriage while his first spouse was living. In the said case no valid divorce was proved. But in the instant case, though subsequently, the Court passed a decree of divorce between the Petitioner and his first wife. In the said case the Division Bench of this Court observed as follows:

...the counsel for the Appellant at the very outset submitted before us that he has filed an affidavit on 16.2.97 before the learned Single Judge giving an advance copy to the counsel for the Respondent that in a similar case, the disciplinary authority did not resort to inflicting extreme penalty of dismissal from service. It has been submitted that in that case also a driver serving in CRPF was found guilty of marrying another woman when first marriage subsisted. He has shown the copy of the affidavit from his record. We have seen the original record of the Civil Rule, but have not been able to find the copy of the said affidavit. However, Mr. Mahanta, learned CGSC has submitted that the affidavit filed by the counsel has somewhere been misplaced in this Registry. In any case, along with the affidavit, the copy of which has been shown to us during the course of the argument, we have seen that in the D.F.O. 87/9-60 a departmental enquiry was held against the driver Ramesh Singh No. 999600007 of 60 Bn. CRPF and the disciplinary authority ordered stoppage of one increment with cumulative effect.

It would not be out of place to notice at this stage a judgment of this Court reported in (1995)2 GLR 388 (Prafulla Kalita v. Oil and Natural Gas Commission) wherein a Single Bench of this Court set aside the punishment of dismissal and directed the disciplinary authority to impose other lenient punishment.

5. In view of the above and in the facts and circumstances of this case, the impugned order revolving the Petitioner from service is set aside. The disciplinary authority is at liberty to award any punishment except dismissal or removal after taking into consideration of the entire facts and circumstances of this case. This shall be done within a period of 3 (three) months from the date of receipt of a

certified copy of this judgment and order which shall be furnished to the Respondent No. 2 and 3, namely, Commandant (EB) SSB Dte, New Delhi-66 and the Divisional Organiser, SSB, North Assam Division, Tezpur. The Petitioner shall be reinstated in service forthwith. It is left to the concerned authority of the State Government to consider the matter as to payment of salary etc. for the period from the date of removal to the date of reinstatement.

Accordingly the writ petition stands disposed of. No costs.