

(2019) 05 GAU CK 0120
In the Gauhati High Court
Case No : Writ Petition (C) No. 912 Of 2018

Pabitra Kr. Nath

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 15, 27, 51
Central Civil Services (Conduct) Rules, 1964 — Rule 21, 21(2)

Citation : (2019) 05 GAU CK 0120

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : I Choudhury, A. Ullah, R. L. Chutia, S. K. Medhi

Final Decision : Disposed Off

Judgement

1. Heard Mr. I. Choudhury, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned CGC for Union respondents.
2. In this petition, the petitioner has challenged the dismissal order dated 25.10.2017, by which he was dismissed from service for violating provisions of Rule 15 of CRPF Rules, 1955 and Rule 21 of CCS (Conduct) Rules on the ground that the petitioner had entered into second marriage despite having his first wife living and without obtaining divorce and also without obtaining permission from the Competent Authority.
3. The aforesaid dismissal order was upheld by the Appellate Authority vide order dated 28.12.2017 by rejecting the appeal preferred by the petitioner on the ground that the said dismissal order is not disproportionate to the proven charge vide order dated 28.12.2017.
4. Accordingly, the petitioner has approached this Court by filing this writ petition.
5. As we proceed to examine the issue raised, it may be necessary to advert to certain facts pertaining in the present case.

6. The case of the petitioner, in brief, is that the petitioner was appointed as a Constable, GD in the Central Reserve Police Force (CRPF) in the year 2003 and had been discharging his duties without any blemish in his service record. The petitioner states that he had married one Smt. Minakshi Nath on 10.02.2009. However, soon after his marriage to said Smt. Minakshi Nath, certain differences arose between them.

7. Though the petitioner had alleged that it is his wife who had tormented him mentally after the marriage, on the other hand, it was the allegation of the said Smt. Minakshi Nath that it was the petitioner who had harassed her physically and mentally, demanding dowry and after she became pregnant, the petitioner had expelled her from his house creating the circumstances leading to the separation and accordingly, she started living in her parental house.

8. Though the circumstances leading to the separation of the petitioner from his first wife soon after the marriage have been indicated in the order passed by the learned Judicial Magistrate First Class, Goalpara in MCR Case No. 142/2011, there is no judicial finding as to the exact circumstances as to who was really responsible for the said separation, nor it is within the scope of this proceeding to examine the same.

9. Be that as it may, the fact remains that because of certain domestic disputes between the petitioner and the said Smt. Minakshi Nath, she did not stay in the house of the petitioner for long and she stayed in her parental house leading to the filing of an application by her before the concerned Magistrate to demand maintenance allowance for herself and her minor daughter.

Accordingly, the aforesaid proceeding was initiated before the Court of the learned Judicial Magistrate, First Class, Goalpara and the learned Judicial Magistrate after hearing the parties passed an order that a sum of Rs.3,000/- (Rupees three thousand) and Rs.2,000/- (Rupees two thousand) be paid for monthly maintenance of the wife and her child from the date of institution of the said application i.e. 21.05.2011, vide order dated 02.05.2012 passed by the learned Judicial Magistrate, First Class, Goalpara.

10. It is after the aforesaid living separately though not formally divorced, that the petitioner contracted the second marriage sometime in the year 2014 apparently without any permission from the authorities.

It seems that the first wife, Smt. Minakshi Nath after coming to know of the said second marriage of the petitioner, made a complaint before the competent authority of the Central Reserve Police Force (CRPF), on the basis of which a notice was issued by the Commandant of the 87th Battalion, CRPF, under whom the petitioner was serving.

By the said notice dated 18.10.2016, the petitioner was informed by the Commandant, 87th Battalion, CRPF that his wife Smt. Minakshi Nath had submitted a petition to the Office, in which she had alleged that despite having

her as his first wife, the petitioner had entered into a second marriage and requested for an enquiry.

11. Accordingly, by the said notice, the petitioner was asked as to whether he had entered into a second marriage while having his first wife living and if that is so, whether he had obtained permission from the Department and if permission had been obtained, to submit the relevant documents in this regard.

12. Pursuant to the said notice issued by the Commandant 87th Battalion, CRPF, the petitioner submitted his reply.

The petitioner admitted to the second marriage. However, he also explained that his first wife Smt. Minakshi Nath soon after the marriage had started tormenting him mentally and abusing him by using filthy language and she stayed in the marital house only for two months after the marriage and left for her parental house at Chapar. Though the petitioner visited the house of his in-laws, there also he was abused and his wife refused to come back to his house and she also filed a case before the Court of learned Judicial Magistrate First Class, Goalpara demanding maintenance allowance which hurt him mentally.

Under the aforesaid circumstances, the petitioner entered into a second marriage in 2014. He also admitted that he did not obtain permission from the Department and requested the authorities to condone the fault on his part and retain him in his service.

13. The authorities however, being unsatisfied with the said reply furnished by the petitioner, initiated a departmental enquiry by furnishing the memorandum of charge on 18.04.2017.

The Article of charge I reads as follows:

"Article of Charge I

The charge against Personnel No. 031511825 C/GD Pabitra Kumar Nath, F/87 Bn, CRPF is that while being a member of the Force as per provision of Section 11 (1) of CRPF Act, 1949, he entered into second marriage despite having his first wife and thus committed misdeed. Hence, personnel has violated the provision of Rule 15 of CRPF Rules, 1955 and Rule 21 of CCS Rules. This action on the part of the personnel is against the discipline and the orders provided in Section 11(1) of the CRPF Act, 1949 and is punishable under the provision of Rule 15 and 27 of CRPF Rules, 1955."

14. The list of documents sought to be relied upon by the authorities included:

1. The petition filed by Smt. Minakshi Nath, first wife of Force No. 031511825 C/GD Pabitra Kumar Nath.

2. The order passed by learned Judicial Magistrate, First Class, Goalpara in the application filed by the first wife for payment of maintenance allowance.

3. The notice issued by the Commandant on 18.10.2016.

4. The reply of the petitioner, etc.

15. The departmental enquiry was duly held and the aforesaid charge of contracting second marriage during the subsistence of the marriage with the first wife was held to be proved.

16. On the basis of the said enquiry report, the Disciplinary Authority issued a show-cause notice to the petitioner on 27.09.2017 by furnishing a copy of the enquiry report.

The petitioner reiterated his admission of having contracted the second marriage by explaining the circumstances under which he married the second time.

17. Thereafter, the impugned dismissal dated 25.10.2017 was passed by holding that by entering into a second marriage during the subsistence of the marriage of the first wife, the petitioner has committed the misconduct. It was held that the petitioner has committed the misdeed of entering a second marriage despite having his wife living without obtaining divorce, and permission from the Department.

Accordingly, by invoking the powers conferred under Section 11(1) of the CRPF Act, 1949 and Rule 27 of the CRPF Rules, 1955, the punishment of dismissal from service of the petitioner was imposed on the petitioner and the other consequential orders were passed.

18. His appeal against that the said dismissal order was rejected by the Appellate Authority on 28.12.2017.

The Appellate Authority also noted that the petitioner himself admitted in writing that he had contracted the second marriage with Smt. Swapna Nath while his first wife Smt. Minakshi Nath was still alive and without obtaining divorce from her and also without obtaining prior approval from the Authority and as such, the petitioner has committed an act of misconduct in his capacity as a member of the Force under Section 11(1) of the CRPF Act, 1949, which amounts to violation of the Rule 15 of the CRPF Rules, 1955 read with Rule 21 of the CCS (Conduct) Rules, 1964, which is an act prejudicial to the good order and discipline of the Force and liable to be punished according to Rules 15 and 27 of the CRPF Rules, 1955 and his integrity cannot be trusted in the Force.

It was also noted that petitioner had not brought out any new facts and material evidence in the appeal to prove his innocence with reference to the reliefs sought by him and accordingly, upheld the order of dismissal by rejecting the appeal with liberty to the petitioner to file a revision petition under Rule 29 of the CRPF Rules, 1955.

19. The main plea taken by the petitioner in this petition is that the aforesaid penalty of dismissal imposed upon the petitioner is disproportionate to the charge proved and as such, the matter may be remanded to the Authority to pass an appropriate order of penalty other than dismissal or removal in this

regard.

20. This submission of the petitioner, however, has been vehemently objected by Mr. S. K. Medhi, learned CGC appearing for the Union respondents contending that under no circumstance it can be said to be disproportionate in nature.

He submits that it has been held by the Division Bench of this Court that contracting a second marriage during the subsistence of the marriage with the first wife amounts to gross act of indiscipline and order of dismissal cannot be said to be disproportionate.

In this regard, Mr. Medhi, learned CGC has relied on the decision of Division Bench of this Court rendered in the Union of India and Ors. Vs. Ramashankar Gupta and Ors., 2012(4) GLT 532.

In the aforesaid decision, the Division Bench of this Court after referring to various decisions of this Court as well as of the Hon'ble Supreme Court made the following observations:

"16. The charge against the petitioner was contracting second marriage during the subsistence of the first marriage which is prohibited under Rule 21 of the Central Civil Services (Conduct) Rules, 1964. The said rule says that no Government servant having a spouse living shall enter into or contract a marriage with any person. However, the Central Government may permit a Government servant to enter into or contract any such marriage if it is satisfied that such marriage is permissible under the personal law applicable to the Government servant and the other party to the marriage and that there are other grounds for doing so.

17. The facts of the case were taken note of by the learned Single Judge after perusal of the departmental proceeding file. The learned Single Judge noted that on the basis of the written complaint lodged by Smt. Lakhi Goswami alleging her marriage with the petitioner, the charge memo was prepared on 11-05- 2002 and on the same day the Inquiry Officer and the Presenting Officer were appointed. On 22-11-2002 the Inquiry Officer had informed the petitioner about holding of the inquiry. Thereafter, the Inquiry Officer submitted his report on 24-11-2002 holding the petitioner guilty of contracting second marriage. The learned Single Judge found that the statements of the witnesses were obtained but there was no cross-examination. He, therefore, took the view that the departmental proceeding was carried out in quick succession.

18. But at the same time, the learned Single Judge recorded the finding that there was admission on the part of the petitioner regarding the second marriage. The learned Single Judge further held that although the petitioner had contended that he had been punished without holding any inquiry, the records revealed that there was a departmental inquiry although it was conducted in an irregular manner. The relevant findings of the learned Single Judge are as under:

"It is true that there was admission on the part of the petitioner regarding

second marriage. It is also true that the petitioner has not explained the circumstances leading to such admission on his part. In the writ petition, the plea of the petitioner is that he has been imposed with penalty of dismissal from service without holding any enquiry. However, as noted above, the records have revealed that there was a departmental enquiry although was conducted in an irregular manner."

19. In view of the above findings recorded by the learned Single Judge, we are of the considered opinion that the learned Single Judge ought not to have interfered with the punishment imposed. When there was admission on the part of the petitioner admitting the second marriage and he having not explained the circumstances leading to such admission, irregularity in the conduct of the departmental inquiry as noticed and indicated above would neither vitiate the conclusions reached nor the imposition of penalty.

22. From a careful reading of the above judgment, we are of the considered opinion that Trilok Singh Rawat (supra) does not lay down the proposition that where the charge of bigamy is proved against the Government servant, the punishment of dismissal from service should not be imposed as the same would be disproportionate. Moreover, in the case of Prafulla Kalita (supra), a Single Bench of this Court while interfering with the punishment of dismissal on the charge of bigamy, itself observed that the said judgment should not be deemed to be a precedent for all other cases as it was passed in the facts and circumstances of that case. It was observed that the relevant rules empowered the authority to give permission to an employee to marry for the second time on the grounds furnished."

21. The Division Bench of this Court also noted that merely because the offence of bigamy is compoundable may not have any relevance to the quantum of punishment as mentioned in para 25 of the decision of the aforesaid petition, which is reproduced hereinbelow:

"25. From a careful reading of the aforesaid decision, it appears to us that the said judgment was delivered in the peculiar factual context of that case, namely, the withdrawal of the complaint by the first wife. However, we are unable to persuade ourselves to accept the view expressed in Amal Kumar Baruah (supra), that since the offence of bigamy under the criminal law is compoundable, the effect of which is an acquittal of the offender, the imposition of the punishment of dismissal from service on the proven charge of bigamy would be disproportionate. It needs no reiteration that the purpose and perspective of a criminal trial and a departmental proceeding are quite distinct and different. In the criminal trial the question is as to whether the accused is guilty of the offence alleged, which if proved will be followed by penal consequences, for which the standard of proof applied must be of the highest order i.e. proof beyond all reasonable doubt. On the other hand, in so far a disciplinary proceeding is concerned, the objective is to find out as to whether the charge against the delinquent employee has been proved or not to enable the disciplinary authority

to take a decision as to whether some penalty as a measure of discipline should be imposed on him or not, which may include not retaining him in service, for which purpose the standard of proof would be comparatively lesser than a criminal trial as it is pre-ponderance of probability based on some materials on record."

22. Accordingly, the Division Bench held that since bigamy is prohibited by Rule 21 of CCS (Conduct) Rules, it would not be correct to say punishment of dismissal of proven charge of bigamy would be disproportionate on the ground that under the criminal law bigamy is compoundable offence more so, where the delinquent was a member of the disciplined Force like Assam Rifles and continuation of such a person in the Force may have adverse affect on the overall image of the Force. It may also affect the public perception that a person guilty of bigamy can still continue as the member of such Force and it may have a cascading effect on the overall morale and discipline of the force and the view taken by the Single Bench that the second marriage has nothing to do with either with the official position of the petitioner or the discharge of official duties does not appear to us to be a correct appreciation of the consequences of a proven charge of bigamy as held in para 26, which is reproduced hereinbelow;

"26. As has already been noticed above, bigamy is prohibited by Rule 21 of the Central Civil Services (Conduct) Rules, 1965. When bigamy is expressly prohibited under the law (except the two exceptions mentioned in the proviso which are not attracted and applicable in the present case), it would not be correct to say that punishment of dismissal from service on a proven charge of bigamy would be disproportionate on the ground that under the criminal law bigamy is a compoundable offence, more so when the delinquent was a member of a disciplined force like the Assam Rifles. Continuation of such a person in the force may have an adverse affect on the overall image of the force. It may affect the public perception that a person guilty of bigamy can still continue as a member of such force. Moreover, it may have a cascading effect on the overall morale and discipline of the force. The further view taken by the Single Bench that the second marriage has nothing to do with either the official position of the petitioner or the discharge of official duties does not appear to us to be a correct appreciation of the consequences of a proven charge of bigamy."

23. Heard learned counsel for the parties and also perused the materials on record.

24. There cannot be any doubt that contracting a second marriage during the subsistence of the marriage of the first wife may amount to gross misconduct and if disciplinary authority imposes the penalty of dismissal or removal from service, it may not always amount to a disproportionate penalty.

However, the question which arises for consideration, as contended by the petitioner in this case is, whether in all cases where the bigamy has been proved, is the dismissal from service the only punishment which has to be invariably

imposed by the Authority, and whether the issue that, it is a disproportionate punishment cannot be raised at all?

25. It is the case of the petitioner that the petitioner had contracted the second marriage only after the first wife left him soon after the marriage and thereafter, the petitioner's first wife never stayed with him because of which a bona fide impression was created in his mind that it can be treated as a social separation even though there was no formal divorce between them. According to the petitioner, the fact remains that the petitioner and the first wife never remained and stayed together thereafter and he considered the said separation to be socially approved.

26. It has been submitted that the petitioner never denied that he did not marry the first wife and in fact, he is paying maintenance allowance to his first wife and child as ordered by the learned Judicial Magistrate, First Class, Goalpara as mentioned above.

It is the case of petitioner that it is because of the harassment by the wife and also as she had left the marital home on her own that the petitioner had no option but to contract the second marriage.

It is also not the case that the petitioner had married the second wife on a sly or against the objection of the first wife while living with the first wife. He married the second wife because of certain compelling circumstances.

27. This Court, of course, is not making any observation or finding as regards the circumstances which led to the separation between the petitioner and his first wife and for their staying away from each other, but the fact remains that they stayed together only for a few months after the marriage and thereafter, stayed apart till now, as evident from the order passed by the Judicial Magistrate, First Class, Goalpara, in MCR Case No. 142/2011 and did not stay together because of which the petitioner was directed to provide maintenance allowance to his wife and child.

From the above what is evident is that because of certain reasons, of conflicting versions, that they are staying separately and there were certain circumstances which led to the contracting of the second marriage by the petitioner.

28. It may be observed that though the learned Judicial Magistrate, First Class, Goalpara indicated that the petitioner was responsible for the first wife in not remaining in the house, and for her going away from the marital house, because of which the learned Magistrate passed the order for payment of maintenance allowance, the fact remains that they were staying together only for a few months after their marriage in 2009 and thereafter, till date they had not stayed together.

29. It may be also noted that the aforesaid order passed by the learned Magistrate was brought on record by the Department during the aforesaid departmental proceeding as evident from the list of documents annexed to the

memorandum of charges furnished to the petitioner on 18.04.2017 and as such the Department was aware of certain circumstances of the separation of the petitioner from his first wife.

30. The petitioner has been visited with the penalty of dismissal for violating Rule 21 of the CCS (Conduct) Rules. The aforesaid Rule 21 reads as follows:

"21. Restriction regarding marriage

(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-

(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) There are other grounds for doing.

(3) A Government servant who has married or marries a person other than of Indian nationality shall forthwith intimate the fact to the Government."

The aforesaid restriction in contracting a second marriage is, however, not absolute. There is a provision under Sub-rule 2 of the Rule 21 that the Central Government may permit a Government servant to enter into or contract a second marriage if such marriage is permissible under the personal law applicable to such Government servant and other party to the marriage and there are "other grounds" for doing so.

The Rule is silent as to nature of "other grounds" mentioned under proviso to Sub-rule 2 of Rule 21 under which a second marriage would be permissible.

Obviously, human relationship being a complicated state of affair, it would not be possible to foresee all the eventualities which may lead to leaving separately of the husband and wife and for contracting a second marriage. Perhaps it is for that reason that the rule making authorities had not specifically mentioned the nature of "other grounds" and it has been left to the wisdom of the authorities to consider the grounds on which a second marriage may be contracted which may not amount to a punishable misconduct under the Conduct Rules.

31. This Court is of the view that if that is so, the authorities will be required to examine this aspect also as to the reason for contracting a second marriage before coming to a conclusion that the second marriage will be a misconduct punishable under Rule 21 of the CCS (Conduct) Rules.

It may be also noted that the petitioner is merely a Constable and not a highly

educated person. Though he has not made any specific plea as to the aforesaid provision under Sub-rule 2 of Rule 21 of the CCS (Conduct) Rules, he has indicated in his reply to the official show-case notice as to the circumstances under which he contracted the second marriage.

This Court, of course, is not suggesting that the said reply to initial show-cause notice dated 18.10.2016 definitively portrays the correct picture of the circumstances in which he got married for a second time. But nevertheless, the fact remains that he has explained the circumstances under which he contracted the second marriage. This is an issue which, however, has to be examined by the authorities.

32. The aforesaid stand of the petitioner was also repeated when he submitted in his application dated 07.09.2017 and 21.09.2017 in course of departmental enquiry, in response to the notice from the Enquiry Officer. He stated that he had been having matrimonial disputes with the first wife Minakshi Nath and he had been staying separately from her and there were reasons for not staying together as wife and husband. It was stated that his household works were not properly organized because of his wife's staying away from him and because of the comments made by the relatives, he performed the second marriage.

In other words, it is not the case of the petitioner that while living together with his first wife, by neglecting the first wife he contracted the second marriage. He contracted the second marriage only because of the fact that the first wife was not staying with him though as regards the reasons for staying separately, this Court is not making any observation for the reasons already discussed above. There were circumstances as referred to above, which, according to the petitioner compelled him to marry for a second time.

33. In view of the above facts and circumstances, this Court is of the opinion that the aforesaid reasons proffered by the petitioner may amount to be good ground as mentioned under the proviso to Sub-rule 2 of Rule 21, in which event such contracting a second marriage may not be a misconduct.

If that is so, the authorities, in the opinion of this Court, would be required to examine the said issue before coming to a conclusion that only the penalty of dismissal would be appropriate to the proven charge of bigamy.

34. It may be also noted that the petitioner has not denied the plurality of marriage and this Court also is not doubting the conclusion arrived at by the authorities that the petitioner had contracted a second marriage during the subsistence of the marriage with the first wife. The concern of the Court and the issue to be considered by this Court, however, whether imposition of the penalty of dismissal on the petitioner under the circumstance mentioned above would be disproportionate or not.

35. This Court would also like to observe that there cannot be any doubt and dispute about the legal proposition as enumerated by the Division Bench of this

Court in the judgment cited above by the learned counsel for the respondents. However, it may be also noted that the issue relating to proviso to Sub-rule 2 of Rule 21 of the CCS (Conduct) Rules was not discussed nor dealt with and accordingly, this Court would hold that the findings and conclusions therein would be confined to the peculiar facts of the case and may not be applicable in the present case.

36. This Court would like to observe that though dismissal from service for committing certain grave misconduct may be permissible under the rules, the authorities must carefully weight all the relevant circumstances and considerations before awarding such a penalty, as in the present case.

37. One of the considerations, in the opinion of this Court may be, what were the mitigating or compelling circumstances under which he had contracted the second marriage. Other consideration could be what would be the repercussion on the family of the employee, as the misconduct intrinsically relates to his family problems or issues. If the employee is to be dismissed from service, obviously, he will have no more the source of income, with which he was not only sustaining himself but his family also, including the first wife, the daughter as well as the second wife and the parents, if any. By dismissing the employee, the source of income and the source of sustenance of not only the petitioner but his dependants will be abruptly discontinued, making the employee and his dependents totally vulnerable to stark poverty and penury. The social cost to such disciplinary action may outweigh the requirement of discipline of the individual. From that perspective, dismissal may amount to a disproportionate penalty. As such, in the opinion of this Court, the disciplinary authority may have to examine these aspects and considerations before imposing the penalty of dismissal which in the opinion of this Court would be covered by the expression "other grounds" mentioned under proviso to Sub-rule (2) of Rule 21 of the CCS (Conduct) Rules.

38. As mentioned above, this aspect about the "other grounds" for contracting a second marriage as mentioned under sub Clause (b) to the proviso of sub Rule 2 to the Rule 21 of CCS (Conduct) Rules was never discussed by the Court in the said decision in Ramashankar Gupta (supra). Accordingly, this Court is of the view that the decision rendered in the said case may not be applicable in the present case.

39. In view of above, it is directed that the Appellate Authority shall reconsider the appeal about the applicability of Clause (b) to proviso to Sub-rule 2 of Rule 21 of the CCS (Conduct) Rules at the time of the consideration of the appeal, and thus reconsider the proportionality of the penalty of dismissal imposed by the Disciplinary Authority.

40. Accordingly, the matter is remanded to the Appellate Authority with the above observations and directions. The Appellate Authority will pass a fresh order in the light of the observations made, within a period of two months from the

date of receipt of a certified copy of this order. If the appeal is allowed, necessary consequential order, for reinstatement, if any shall be passed. If, however, the petitioner is aggrieved by the fresh appellate order that may be passed, the petitioner may seek redressal of his grievance before the appropriate forum.

41. Mr. Medhi, learned CGC submits that the petitioner has been charged under Rule 15 of the CRPF Rules, 1955 which prohibits plural marriage. However, the petitioner had been imposed the penalty of dismissal by invoking also Rule 21 of the CCS Rules as evident from the disciplinary proceedings.

It may however, noted that the petitioner was charged under Rule 15 and Rule 21 of the CCS Rules as mentioned in the memorandum of charge though he was punished under Section 11(1) of the CRPF Rules 51 read with Rule 15, 27 of the CRPF Rules, 1955.

Accordingly, this Court is of the view that since the authorities had invoked under Rule 21 of the CCS Rules, as clearly mentioned in the Article of Charge, the aforesaid provision of Rule 21 of the CCS Rules can be said to be attracted in the present case.

42. With the above observations and directions, the petition is disposed of.