

(2009) 07 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 1308 of 2005

Rohit Kumar Bhujel

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(8), 19(1)
Central Civil Services (Conduct) Rules, 1964 — Rule 21
Constitution of India, 1950 — Article 14, 311

Citation : (2010) 1 GLR 450

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : M.I. Sharma, for the Appellant; C. Kamal, for the Respondent

Judgement

A.C. Upadhyay, J.—In this writ petition the petitioner has assailed the legitimacy of the order of his removal from service. The petitioner at the relevant time was working as Rifleman/General Duty with the Commandant of 7 Assam Rifles, Manipur. While the petitioner was serving in the department a disciplinary proceeding was initiated against him for alleged 2nd marriage with one Smt. Aton Kashung Shimray, without having obtained prior Government sanction or without seeking legal divorce from Smt. Aton Kashung Shimray. This act of the petitioner was found to be contrary to the provisions of Rule 21 of CCS (Conduct) Rules, 1964 and accordingly article of charge was served upon the petitioner alleging plural marriage. The Inquiry Officer on completion of the Departmental Inquiry submitted report holding the charge against the petitioner to be correct and fully established. The disciplinary authority, in exercise of the power conferred by Rule 19(1) of CCS (CCA) Rules, 1965, vide order dated 6.8.2000 dismissed the petitioner from service.

2. Heard Mr. M.I. Sharma, Learned Counsel for the petitioner and Mr. C. Kamal, learned CGSC for the respondents.

3. Learned Counsel for the petitioner submitted that the petitioner never contracted second marriage with Smt. Aton Kashung Shimray, as alleged in her affidavit before the CEO, 7th Assam Rifles. The petitioner also denied to have sworn any affidavit. However, it is admitted by the petitioner that he was in love with Smt. Aton Kashung Shimray while he was posted near her residence at Maphou Dam but denied to have given her the status of a wife.

4. Learned Counsel for the petitioner submitted that the Inquiry Officer without having verified performance of a legally valid marriage by the petitioner with Smt. Aton Kashung Shimray, completely basing on false statement made by the lady, held the petitioner to be guilty of plural marriage and on the basis of such report the petitioner was dismissed from service.

5. Mr. C. Kamal, Learned Counsel for the respondents submitted that it has been stated in the affidavit in opposition submitted by the respondent that in the inquiry proceeding petitioner himself admitted to have got wedded with Smt. Aton Kashung Shimray. Thus on the basis of such statement made by the petitioner, he was held guilty and punishment was awarded to him. Although Learned Counsel for the petitioner and the respondents tried to establish their own stand points before this Court on the truth of marriage of the petitioner with Smt. Aton Kashung Shimray, but the fact remains that during the inquiry proceedings before the Inquiry Officer the petitioner was not afforded any opportunity to defend him in the case by engaging a Counsel of his choice. In the entire inquiry proceedings there is no reflection in any of the notings, regarding affording of an opportunity to the petitioner to engage a Counsel of his choice to defend himself in the Departmental Proceeding. The Inquiry Officer did not care to ascertain as to whether the form of marriage i.e., as stated by the petitioner is a recognized form of customary marriage prevailing in the community of the petitioner nor did he ascertain with certainty, if at all a legally valid marriage was solemnized. When the petitioner was interrogated by the Inquiry officer, he stated to have fallen in love with Mrs. Aton and then married her in a local Mandir at Imphal. The Inquiry Officer very well obtained the statement of the petitioner's legally married wife Smt. Gyatri Bhujel, who informed the Inquiry Officer that she got married with the petitioner according to Hindu rites. Therefore, before holding the petitioner guilty of plural marriage with Ms. Aton Kushung Shimrey, solemnization of marriage in terms of Hindu rites, (if Ms. Aton was a Hindu by religion), should have been verified by the inquiry officer. For a Hindu, marriage is not contract, it's a sacrament. Giving Status of a wife and getting legally married in terms of Hindu rites and customs are not similar propositions. Living together and having children may not necessarily mean a legally valid marriage.

6. Further, the respondents denied the statement made by the petitioner regarding disposal of his representation only on 19.8.2005. It is contended on behalf of the respondents that the appeal/representation of the petitioner was rejected on 10.3.2002. Admittedly on having filed a writ petition before this Court, being WP(C) No. 882 of 2003, for not disposing the appeal/representation

submitted by the petitioner, a direction was issued by this Court on 30.6.2003 to the DIG, Assam Rifles to dispose of the representation in accordance with the provisions of law.

7. The order dated 10.3.2002 issued by the DIG, Assam Rifles, rejecting the appeal/representation filed by the petitioner, does not reflect that it was passed in terms of the direction issued by the court in WP(C) No. 882/83. Furthermore, there is no reference of communication of such order to the petitioner by the office of the Director General, Assam Rifles. On the top of it if at all the appeal/representation was rejected prior to the date of order dated 30.6.2003 passed by this Court in WP(C) 882 of 2002, such copy of order would have been placed on the record by the respondents. Therefore, considering the aforesaid aspect of the matter, the rejection of the appeal/representation of the petitioner has to be considered to have been communicated to the petitioner vide letter dated 19.8.2005, which was received by the petitioner. Accordingly, in the facts and circumstances stated above, lapses or delay on the part of the petitioner sought to be projected by the respondents in this case can not succeed.

8. Having perused the materials on record and the statement made by the petitioner and the affidavit submitted on his behalf as it was admitted plainly by the petitioner, I have no hesitation to hold that during subsistence of the marriage, petitioner lived with another woman and claimed to have married her in a temple. Further, having said so this brings us to consider as to whether the punishment of dismissal from service was appropriate for having contracted second marriage.

9. Learned Counsel for the appellant submits that in the facts and circumstances of the present case, the punishment of removal of an employee for having contracted second marriage is too harsh and unreasonable. In this context, Learned Counsel for the appellant relied on a decision of this hon'ble court in *Trilok Sing Rawat v. Union of India* 2000(3) GLT 558 which reads as follows:

4. It would not be out of place to note at this stage a judgment of this Court *Prafulla Kalita v. Oil and Natural Gas Commission* (1995) 2 GLR 388 wherein a Single Bench of this Court set aside the punishment of dismissal and directed the disciplinary authority to impose other lenient punishment. In *Prafulla Kalita's* case (supra), the charge was same i.e., one of bigamy.

5. Following the law laid down by a Single Bench of this Court and agreeing with the submission of the Counsel for the appellant that in another case extreme penalty of dismissal from service was not imposed, we hereby set aside the punishment of dismissal of the appellant from service and leave the question of imposition of lighter punishment to the disciplinary authority. The disciplinary authority would be at liberty to pass any punishment except dismissal or removal after taking into consideration of the entire facts and circumstances of the case. This exercise be done within a period of 3 months from the date of production of a certified copy of this judgment.

10. In *Prafulla Kalita v. Oil and Natural Gas Commission, Dehradun and Ors.* (1995) 2 GLR 388, it was held as follows:

6. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, the Supreme Court considering its earlier decision in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, laid down the law as follows:

Re: contention (d) Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process." The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the court even as to sentence, is not outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 WLR 1174 (HL) Lord Diplock said "..... Judicial Review has, I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community" In *Bhagat Ram v. State of Himachal Pradesh* AIR 1983 SC 454 (atp.460) this Court held:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note and emphasize is that all powers have legal limits.

In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

11. It is unnecessary to repeat that in a Departmental Inquiry proceeding an aberrant officer is entitled to get an appropriate opportunity to know the articles of charges and to challenge them appropriately. As a matter of fact, CCS (CCA) Rules, 1965 which are applicable in this case also explicitly, specify the procedure of conducting an inquiry. Sub-rule 8 of Rule 14 of the said Rules offers a delinquent Government servant an opportunity of assistance from any other

Government servant to present the case on his behalf. However, restrictions are there in engaging a legal practitioner in a departmental proceedings. The aforesaid provision confers the right to a delinquent to get the assistance of a Government officer to enable him to defend, his case significantly to his own satisfaction. The obligation and the task of affording opportunity of being heard to the Government servant is cast on the respondents. To be more precise "a reasonable opportunity of being heard", as envisioned in Article 311 of the Constitution of India has been interpreted to mean "a genuine and effective opportunity and not mere pretence". The opportunity to be given is to be adapted to the situations, keeping in view rank, educational qualifications and social backgrounds of the employees. In such circumstances, a duty is saddled on the authority concerned to make the delinquent employee conscious of his right to receive such help of the Government officer for defending his case by adequately explaining the concerned delinquent the effect and consequence of refusal to cross-examine the witnesses. In fact, in the present case the concerned disciplinary authority did not actually deal with that aspect of the subject in right perspective, in terms of the requirement of law.

12. The appellate authority only stated that the petitioner contracted plural marriage and thus it refused to accept the plea of any lighter punishment. The Disciplinary Authority relied upon the report of the Inquiring Officer, but the departmental proceedings which was made available by the respondent for perusal of this Court do not reflect that said report was ever furnished to the petitioner. Thus the petitioner did not get any opportunity to take the assistance of other government servant to defend his case. He was also deprived of the opportunity to cross-examine the witnesses. In the circumstances, it can be safely held that the petitioner was denied the opportunity to defend his case effectively and properly, and on that ground alone, the order of removal of the petitioner from the service can not be sustained.

13. The factual matrix projected by the Inquiry Report disclosed second marriage by the petitioner. The only deliberation in respect of the petitioner, which remains to be considered here, is as to whether before contracting the second marriage he obtained permission to get married from the concerned authority. In this context relevant extract of the Rule 21 of the CCS (Conduct) Rules, 1964, is, given below for the sake of easy reference:

21. Restriction regarding marriage. - (1) No Government employee shall enter into, or contract, marriage with a person having a spouse living; and

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

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

(a) such marriage is permissible under the personal law applicable to such

Government employee and the other party to the marriage; and

(b) there are other grounds for so doing;

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

14. Rule 21 of the CCS (Conduct) Rules, 1964, as such does not contemplate a prior permission. The permission may be prior or it may be also ex-post facto. Obviously, the discretion is left on the Government either to give permission or refuse it, on evaluation of the fact situation as indicated in Clause (a) and (b) of Rule 21 of the CCS (Conduct) Rules 1964. It is the Government alone who has to, in the facts and circumstances of the case, either permit or refuse the second marriage to the petitioner. The rule does not indicate such permission must always be prior permission as has been held by the disciplinary authority. However, it cannot be lost sight of that the entire provision is included in the Rule in order to establish discipline and control in the establishment of the Government institutions as well as to maintain peace and harmony in the family of the employees in the society.

15. Thus keeping in view the entire gamut of affairs leading to Inquiry and punishment awarded to the petitioner, I am of the considered view that the punishment of dismissal for contracting second marriage, in the facts and circumstances of this case is an excessive punishment, therefore, the same is required to be set aside. Accordingly, I set aside the impugned order of removal of the petitioner from service and leave the question of imposing lighter punishment to the disciplinary authority. The disciplinary authority will be at liberty to pass any order of punishment except dismissal or removal from service, after taking into consideration of the entire facts and circumstances of the case.

16. However, this exercise may be carried out by the respondents within a period of 3 (three) months from the date of production of certified copy of this order.

The writ petition is disposed of.