

(2021) 03 DEL CK 0336

In the Delhi High Court

Case No : Civil Writ Petition No. 3613 Of 2021, Civil Miscellaneous No. 10974, 10975 Of 2021

State Of Rajasthan & Anr

APPELLANT

Vs

Pankaj Kumar Chaudhary And Ors

RESPONDENT

Date of Decision : 19-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
All India Services (Discipline And Appeal) Rules, 1969 — Rule 8
All India Services (Conduct) Rules, 1968 — Rule 3(1), 3(1A)
Indian Penal Code, 1860 — Section 494, 497
Industrial Disputes Act, 1947 — Section 11A
Code Of Criminal Procedure, 1973 — Section 198

Citation : (2021) 03 DEL CK 0336

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Manish Singhvi, D.K. Devesh, Ravinder S. Garia, Shashank Singh, Abhay Prakash Sahay, Indira Goswami, Mannu Singh

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. The petition impugns the order dated 10th December, 2020 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in OA No.213/2020 preferred by the respondent no.1.
2. The counsel for the respondent no.1, along with respondent no.1 in person, appears on advance notice and considering the nature of the challenge, we have, with consent, proceeded to hear the counsels finally at this stage itself.
3. The respondent no.1 is an Indian Police Service (IPS) Officer, of 2009 batch, of Rajasthan Cadre. Before being selected into IPS, he worked as an Auditor in the Ministry of Commerce. A memo dated 25th April, 2016, under Rule 8 (Procedure for imposing major penalties) of the All India Services (Discipline and Appeal)

Rules, 1969, was served on the respondent no.1, charging the respondent no.1 with, after his marriage on 4th December, 2005 with one Ms. Sudha Gupta, having started living with another woman and also having a son with the said other woman.

4. The stand of the respondent no.1, in response to the aforesaid memo, was, that (i) though he was married to Ms. Sudha Gupta in 2005 but the said Ms. Sudha Gupta refused to live with the respondent no.1 and in fact intended to contract another marriage; (ii) the respondent, in the year 2009 applied for divorce from the said Ms. Sudha Gupta; (iii) however the aforesaid divorce petition was dismissed on 21st December, 2013; and, (iv) the respondent no.1 preferred an appeal (to the High Court) against the order of dismissal of the divorce petition and which appeal was pending consideration at the time of service of the memo.

5. The Disciplinary Authority of the petitioners, being not satisfied with the aforesaid explanation, on 25th January, 2017 appointed an Inquiry Officer, who submitted a report dated 14th July, 2017, of the charge having been proved against the respondent No.1.

6. It is not in dispute, that the High Court before which the appeal preferred by the respondent no.1 against the order of dismissal of his divorce petition was pending, vide order dated 1st May, 2018 granted a decree of divorce between the respondent no.1 and the said Ms. Sudha Gupta.

7. However the Disciplinary Authority of the petitioners, in consultation with the respondent no.3 Union Public Service Commission (UPSC), on 19 th February, 2019 imposed the penalty of dismissal from service on the respondent no.1.

8. Aggrieved therefrom, the OA from which this petition arises, was preferred by the respondent no.1.

9. CAT, in the impugned order has found/reasoned, that (i) the only charge against the respondent no.1 was, (a) of, after selection in IPS in May, 2009, having maintained distance from his wife Ms. Sudha Gupta, with whom the respondent no.1 also had a daughter, born in the year 2008, and of having applied for divorce from Ms. Sudha Gupta on 6th October, 2009 and which petition for divorce stood dismissed on 21st December, 2013; (b) of, even prior to the decision dated 21st December, 2013 in the divorce petition, having established relationship with one Ms. Mukulika and also having a son, born on 14th May, 2011, with the said Ms. Mukulika; and, (c) of, despite being married and before taking divorce from his first wife Ms. Sudha Gupta, having established relationship as a wife with another woman and having also begotten a son with another woman, all in violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968, amounting to serious misconduct; (ii) by the time the charge memo was served on the respondent no.1, the appeal preferred by the respondent no.1 against the dismissal of his divorce petition was already pending; (iii) though CAT does not act as an appellate authority on the findings recorded by the Inquiry

Officer but can certainly verify whether any serious lapse had taken place in the process of conducting inquiry; (iv) the respondent no.1 had raised repeated objections to the very appointment of the Inquiry Officer who was himself facing charges of corruption and from whom the respondent no.1 thus did not expect fair treatment; (v) the reasons given by the respondent no.1 for change of Inquiry Officer were not controverted by the petitioners and the only response of the petitioners was that the respondent no.1 as a charged officer could not raise objection with regard to the integrity of the Inquiry Officer; (vi) the method of discussion undertaken by the Inquiry Officer in his report was somewhat extraordinary; a major part of the report was devoted to the interpretation of the word 'integrity'; the report of the Inquiry Officer smacked of a judgment of the Tribunal or a High Court inasmuch as it referred to various judgments and extracted paragraphs from the judgment; it was not even mentioned in the report that the Presenting Officer had argued so; the Inquiry Officer had thus imported all his personal knowledge on the subject into the report; (vii) the function of the Inquiry Officer is to take into account the evidence before him and to record a finding as to whether charge against a delinquent officer is proved or not and there is no scope for the Inquiry Officer to import his own knowledge or acumen into the report; (viii) the Disciplinary Authority had not taken into account two important factors i.e. firstly, that the High Court had granted a decree for divorce on 1st May, 2018 and secondly, of decriminalization of the offence otherwise punishable under Section 497 of the Indian Penal Code, 1860; (ix) had these two factors been taken into account, the imposition of punishment of dismissal against the IPS Officer, with a decade of otherwise unblemished service, became a bit untenable; and, (x) though there existed some legal and factual basis to interfere with the report of the Inquiry Officer and other consequential steps but the matter was required to be given a quietus.

Accordingly, CAT, vide the impugned order, partly allowed the OA of the respondent no.1, by setting aside the order of punishment, only to the limited extent of requiring the Disciplinary Authority to pass an order, imposing against respondent no.1., any penalty other than the one of dismissal or removal from service.

The said exercise was directed to be done within three months from the date of receipt of copy of the impugned order.

10. Instead of undertaking the exercise as directed by CAT, the petitioners have preferred this petition, which has come up today for the first time.

11. Prima facie, finding the view taken by CAT to be a reasonable one, we have enquired from the senior counsel for the petitioners, the perversity if any therein.

12. The senior counsel for the petitioners has argued, that (i) CAT exercises the same jurisdiction as used to be earlier exercised by the High Courts; (ii) with respect to interference in punishments meted out by the Disciplinary Authorities, the law as applicable to the High Courts, as enunciated by the Constitution Bench

in *State of Orissa Vs. Bidyabhushan Mohapatra* AIR 1963 SC 779 was, that the Court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the Rules, is appropriate, having regard to the gravity of the misdemeanor established, reasoning that if there has been an inquiry consistent with prescribed Rules, neither the reasons which induced the punishing authority are justiciable nor is the penalty open to review by the Court; (iii) however subsequently the aforesaid Rule was relaxed; in *Ranjit Thakur Vs. Union of India* (1987) 4 SCC 611, it was held that judicial review 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 Disciplinary Authority; the sentence has to however suit the offence and the offender and 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 Disciplinary Authority, if the decision as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction; and, (iv) the scope of interference in the sentence meted out by the Disciplinary Authority, now in vogue, as laid down in *B.C. Chaturvedi Vs. Union of India* (1995) 6 SCC 749 is that the Disciplinary Authority is invested with the discretion to impose appropriate punishment, keeping in view the magnitude or gravity of the misconduct; the High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty; if the punishment imposed by the Disciplinary Authority shocks the conscience of the High Court or the Tribunal, the High Court or the Tribunal would appropriately mould the relief, either directing the Disciplinary Authority to reconsider the penalty imposed or to shorten the litigation, itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

13. The argument of the senior counsel for the petitioners is, that the sentence meted out to the respondent no.1 in the present case, of dismissal from service, for contracting a second marriage during the subsistence of his earlier marriage, while in an elite service as the IPS, cannot be said to be so disproportionate so as to shock the conscience of this Court. It is further argued that CAT, vide the impugned order has directed the Disciplinary Authority to meet out punishment other than of dismissal or removal from service and which only leaves the punishments of reduction to a lower stage in the time scale of pay, reduction to a lower time scale of pay, grade or post, or of compulsory retirement but which is not applicable considering the length of service of the respondent no.1. It is stated that the petitioners do not desire to keep the respondent no.1, who has behaved so irresponsibly and in an ungentlemanly like fashion, in its public service.

14. We have enquired from the counsel for the respondent no.1, whether the

respondent no.1 intends to challenge the order of CAT.

15. The counsel for the respondent no.1, under instructions from respondent no.1 present in Court, states that the respondent no.1 does not intend to challenge the order of CAT.

16. The counsel for the respondent no.1 has argued, that the first wife of the respondent no.1 was never interested in living with the respondent no.1 and rather wanted to marry someone else and has also given an affidavit in this regard and which has been placed by the respondent no.1 on the record of CAT and is on the record of this petition.

17. However the first wife of the respondent no.1 being not a party to the present proceedings and there being no way to verify the veracity of the affidavit claimed to have been furnished by the first wife of the respondent no.1, we do not deem it appropriate to place any reliance or credence thereon.

18. The counsel for the respondent no.1 has otherwise contended that there were major flaws in the inquiry, as found by CAT in the impugned order also, but CAT, instead of setting aside of the disciplinary proceedings, has given liberty to the petitioner to impose any punishment other than of dismissal or removal from service, on the respondent no.1. Reliance is placed on judgment dated 6th November, 2015 of this Court in W.P.(C) No.3977/2012 titled Premlata Kumari Vs. Union of India holding, again in the context of extramarital affair, that no evidence having been brought on record to prove that any disrepute had been brought to the Force or that the image of the Force stood maligned by the act of the delinquent officers and there being no allegations of the delinquent officers having indulged in any physical act in public or in public view, the punishment meted out of dismissal from service was set aside.

19. We have considered the aforesaid contentions.

20. Rules 3(1) and 3(1A) of the All India Services (Conduct) Rules require every member of the Service to maintain absolute integrity and devotion to duty and to not do anything which is unbecoming of a member of the service and to inter alia maintain high ethical standards, integrity and honesty and to refrain from doing anything which is or may be contrary to any law, Rules, Regulations and established practices.

21. Though undoubtedly the act committed by the respondent no.1, of marrying, during the subsistence of his earlier marriage, since the introduction of legislative bar to the ancient Hindu law/practice permitting polygamy, is punishable in law (see Section 494 of India Penal Code, 1860), but only on the complaint of some person aggrieved by the offence (see Section 198 of Code of Criminal Procedure, 1973) and which in this case would be the first wife of respondent No.1. It is nowhere on record that there was any such complaint. So was not even the charge against the respondent no.1. The ethical standard of an act of bigamy has to be viewed in this light and depending on the facts and circumstances of each

case. An act of bigamy cannot always, whatever the facts may be, lead to maximum punishment of dismissal/removal of government servant from service. The Rules themselves do not provide so. The Disciplinary Authority in the present case however has proceeded on that premise and failed to exercise the discretion in the matter of imposition of punishment, vested in it, in the light of the facts on record. Mention may be made of *Shri Tanaji Dhondiba Awale Vs. The State of Maharashtra* 1984 SCC OnLine Bom 161, where finding that the first wife of the government servant had not made any complaint of bigamy and that the two wives were living amicably in the same house, as a normal household, with the government servant and that the second wife had since left, the punishment of removal from service was set aside. Mention may also be made of *Ministry of Finance Vs. S.B. Ramesh* (1998) 3 SCC 227 where though certain observations of CAT, while setting aside the punishment meted out of compulsory retirement for the charge of bigamy, were disapproved of but the order of CAT otherwise not interfered with.

22. A perusal, of (a) the complaint dated 18th February, 2013 made by the first wife of the respondent no.1; and, (b) the statement dated 6th December, 2013 recorded of the first wife of the respondent no.1, show that (i) she and respondent no.1, at the time of selection of the respondent no.1 in IPS also, were already staying separately, though the petition for divorce was filed by the respondent no.1 after his selection in IPS; (ii) one of her grievances to be, that though it was represented to her and her family that the respondent no.1 and his family belonged to Other Backward Class (OBC) category, as her family, but subsequently it turned out that the respondent no.1 and his family members belong to Scheduled Caste (SC) category; (iii) the said first wife of the respondent no.1, in her complaint, did not claim to have lodged any earlier complaint of having been abandoned by the respondent no.1 or of having lodged any complaint against respondent No.1, for nearly four years after the initiation of the divorce proceedings also; and, (iv) the complaint was made because of arrest of one Rakesh, with whom the respondent no.1 claimed his first wife to be having an illegitimate relationship and which arrest, according to her was on account of the respondent no.1 having misused his position as an IPS officer.

23. We have also perused the Inquiry Report of the disciplinary proceedings against the respondent No.1 and find the Inquiry Officer to have reported, that (i) the main allegation/charge against the respondent related to conduct unbecoming of a member of service; (ii) though the All India Services (Conduct) Rules did not describe what exactly constitutes 'conduct unbecoming of a member of a service' and the same had been left largely to the discretion and good sense of the government servants; (iii) thereby government control obtrudes over the private life of its servants, even in matters not falling within the ambit of any of the Conduct Rules; and, (iv) the action of the respondent No.1, of having a relationship not recognized under the law and not recognized by decent social standards nor by accepted moral standards, came under the category of a forbidden act, a conduct unworthy of a public servant, within the

meaning of Rule 3(1) of the All India Services (Conduct) Rules.

24. What emerges from the aforesaid is, that (i) the matrimonial relationship of the respondent no.1 with his first wife was strained from prior to the date of the respondent no.1 joining IPS, with them staying separately, though of course a daughter out of the said matrimonial relationship was born in the year 2008; (ii) the root cause of matrimonial disharmony between respondent No.1 and his wife being the caste to which the respondent No.1 belongs and not the extramarital affair of respondent No.1 or selection of respondent No.1 in IPS, as was implied in the charge; it is thus not as if, the respondent No.1, on making to the elite IPS, severed his matrimonial links formed when not a member of such elite service; (iii) it is also not as if the respondent No.1, immediately after living separately from his wife, forged links with another woman; he did so, after applying for divorce and gave the second woman stature of wife and his name to the son begotten from this relationship; (iv) it is also not as if the respondent no.1 was openly living and having sexual relationship with a woman other than his wife or was simultaneously living and having cohabitation with another woman besides his wife; the wife of the respondent no.1 was nowhere in picture at the places of postings of the respondent no.1 as an IPS officer; (v) the Disciplinary Proceedings were commenced against the respondent no.1, on the complaint of his first wife, and which complaint itself was made after four years of the pendency of the divorce proceedings and only when the first wife of the respondent no.1 felt that the respondent no.1 was taking advantage of being an IPS officer had got arrested the person with whom the respondent no.1 claimed his wife to be having an illicit relationship; (vi) the respondent no.1 has resorted to the procedure prescribed by law for dissolution of his marriage with his first wife and which marriage has ultimately been dissolved but after the proceedings for dissolution remained pending for nearly nine years; (vii) the respondent no.1 of course, instead of waiting till the outcome of his divorce proceedings, contracted marriage with Ms. Mukulika and also fathered a child with her, all giving a purported stamp of legality to it; and, (viii) the said Ms. Mukulika chose to purportedly marry the respondent no.1 and bear his child knowing of his divorce proceedings and to that extent was consenting thereto.

25. It is in the aforesaid context that the need for interference with discretion exercised by CAT, in holding the punishment meted out of dismissal from service to be disproportionate, has to be judged.

26. We are of the view that in the light of the aforesaid facts, it cannot be said that the impugned order of CAT suffers from any perversity, to require quashing, in exercise of our jurisdiction under Article 226 of the Constitution of India.

27. As far as the argument of the counsel for the petitioner, of the punishment of dismissal from service having not been found by CAT to be so disproportionate as to shock the conscience of CAT, is concerned, though undoubtedly CAT has not recorded that its conscience was shocked but from a reading of the entire order, it is clear that CAT felt that the punishment of dismissal from service, especially

after marriage of the respondent no.1 with his first wife stood dissolved by a decree of mutual consent and especially after the respondent no.1 had already fathered a child out of his relationship with Ms. Mukulika, would be disproportionate. It cannot be forgotten that the respondent no.1 is now about 44 years of age and if dismissed from service would be having hardly any avenues of employment and on the contrary IPS would lose an officer of over ten years of standing and in whose training and experience gained, public money has been invested. Once it is found that the Disciplinary Authority had not taken into consideration the relevant matters, CAT was entitled, as per Union of India Vs. G. Ganayutham (1997) 7 SCC 463, to interfere with the punishment meted out.

28. Before parting with this order, we will only add that (i) once CAT as a specialized Tribunal has been constituted as the final adjudicator of service matters, though not conferred with a power as under Section 11A on the Labour Court / Industrial adjudicator under the Industrial Disputes Act, 1947, has to be deemed to be vested with a power of substantive justice between the government and its servants and if CAT were to find that the misconduct was in the realm of private life of government servant and such misconduct in private life though breaching the ethical standards did not affect the public at large or did not become an issue so as to disturb the peace and harmony in the living quarters of its servants and did not disturb the image of the service and the government servant concerned had ultimately settled the issue to the satisfaction of the aggrieved private party, this Court would not ordinarily interfere; (ii) ethical standards have been changing over the last half a century when the All India Services (Conduct) Rules were framed and the said Rules, like law, have to be considered as a living organism, the purport and meaning whereof changes with the changes in societal behavior; (iii) what may have been unethical standard in 1968, is not necessarily unethical today and / or not necessarily unethical of such severity as in 1968; the society has changed with a lot of affairs of family, which earlier were a matter of public debate, being now confined to the private domain; the concept, definition and standards of morality also has been changing, with the changes in appearance, dressing, language etc.; the behavior which shocked 50 years ago is now considered as normal and / or at best an aberration; (iv) though living with another woman while having subsisting marriage may have been absolute no no till about 20 years back, in today's time it is viewed differently; (v) we cannot also lose sight of the facts that dissolution of marriage under our regime takes an unusually long time; in this case it has taken nearly nine years and which nine years normally are the prime years of the life of the person concerned and which cannot be brought back and what is lost during those years can never be restituted; (vi) the respondent no.1, inspite of having applied for divorce, did not get one till 2011 and was placed with a choice, of either losing out on companionship of a spouse and child during the prime of his life and / or of having relationship and children with an adult, who with full knowledge of state of affairs, was willing therefor; and, (vii) the subsequent events also have to be considered; CAT is right to that

extent, that the Disciplinary Authority did not consider the effect of the divorce having ultimately been granted between the respondent no.1 and his wife and which divorce was by way of a settlement; it is thus not as if the first wife of the respondent no.1 was left with any grievance whatsoever.

29. No ground for interfering with the order of CAT is made out.

30. Dismissed.