

(2000) 11 GAU CK 0012
In the Gauhati High Court
Case No : Writ Appeal No. 241 of 1998

Trilok Singh Rawat

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

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

Citation : (2000) 3 GLT 558

Hon'ble Judges : N.C. Jain, Acting C.J.; P.C. Phukan, J

Bench : Division Bench

Advocate : A.S. Choudhury, R. Majumdar, S. Seal and I. Hussain, for the Appellant; K.K. Mahanta, C.G.S.C., for the Respondent

Judgement

1. This writ appeal has been preferred against the judgment of the learned Single Judge dt. 27.5.98 in Civil Rule No. 3233/94 dismissing the writ petition of the Appellant in which he challenged the punishment awarded to him. The Appellant being an Asstt. Sub-Inspector in Central Reserve Police Force, was dismissed under Rule 21 of the Central Civil Service (Conduct) Rules, 1964 on the ground that he performed a second marriage when his first spouse was living. The learned Single Judge has found that the punishment awarded to the Appellant by the disciplinary authority did not call for any interference. It has further been found that there was no force in the plea of the Appellant that a valid divorce was obtained by the Appellant before performing the second marriage.

2. Although the counsel for the Appellant has made a faint attempt to convince us that there was a valid divorce, we are unable to agree with him. No Panchayat could dissolve the marriage by getting the compromise effected. Similarly, no Magistrate could pass a valid compromise decree on the basis of the consent of the parties. Be that as it may, it appears to us that the Appellant's thought may be wrongly that his first marriage has come to an end because of the decision of the Panchayat. In view thereof, we have got no hesitation in holding that the first marriage was subsisting when the Appellant performed the second marriage.

3. This brings us to the question whether the extreme punishment of dismissal from service was called for in the instant case or not ? The counsel for the Appellant Mr. A.S. Choudhury at the very outset submitted before us that he has filed an affidavit on 16.1.97 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 Anr. 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 he was given a copy of the said affidavit which is with him. It appears to us 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 60Bn CRPF and the disciplinary authority ordered stoppage of one increment with cumulative effect.

4. 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. 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 Anr. 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.

6. For the reasons recorded above, the appeal is partly allowed with the aforementioned observations. No costs.