**(2016) 01 KAR CK 0054**

**In the Karnataka High Court**

**Case No :** W.P. No. 2617 of 2013 (S-CAT)

Union of India and Others — APPELLANT

Vs

B.G. Basappa and others — RESPONDENT

**Date of Decision :** 05-01-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226, 311

**Citation :** (2016) 2 AirKarR 239 : (2016) 2 KCCR 200

**Hon'ble Judges :** Mohan M. Shantanagoudar;K.N. Phaneendra, JJ.

**Bench :** Division Bench

**Advocate :** B. Pramod, CGSC, for the Appellant; H.B. Mahesh HCGP, for the Respondent

**Final Decision :** Allowed

## Judgement

K.N. Phaneendra, J. - The order dated 17.12.2012 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru in OA No.381/2010 is called in question in this Writ Petition. By the said order, the Tribunal has set aside the order of compulsory retirement passed by the Disciplinary Authority dated 31.12.2009.

2. The first respondent was an employee working under the petitioners herein. On 17.12.1990, the first respondent nominated Mrs. S. Meena (wife), Manju and Kavitha (daughters) as nominees towards CGE GIS - 80 and DCRG nomination. On 21.1.1991, the DCRG nomination was recorded and was attested in the Service book of the first respondent in the name of Smt. S. Meena (wife), Manju and Kavitha (daughters) with equal share. The respondent No. 1 while working as sorting assistant at Bangalore, the review of DCRG nomination took place. Consequently, the officials were asked to submit revised nomination if needed. Accordingly, the first respondent submitted fresh nomination on 24.2.2004 in the name of Smt. B.V. Padmamba as his wife.

3. From the aforementioned, it is clear that the CGE GIS-80 and DCRG

nomination dated 17.12.1990 was in the name of his wife Smt. S. Meena with full share and alternative nominees being Manju and Kavitha with equal share. Whereas in the family particulars submitted by the first respondent as on 1.1.2004 disclose, Smt. B.V. Padmamba as his wife and she was nominated with full share. The petitioners therefore asked the first respondent about the reasons for submitting the revised family particulars and other related documents including the proof of legal separation in case he has divorced Smt. S.Meena. In reply, the first respondent submitted that he was just living with Smt. S. Meena, who was the wife of late Murugaiah, in the same premises and for some obligation, he nominated her showing her as his wife and her children as his family members in the official records; that during the year 2003, he married Smt. B.V. Padmamba and hence the revised family members and nomination were given in the name of his wife Smt. B.V. Padmamba.

4. The first respondent was issued with the Show Cause Notice to which he has explained that Smt. S. Meena, widow of Murugaiah is employed on compassionate ground and she is also drawing family pension and hence, the revised nomination submitted by the first respondent dated 3.9.2004 needs to be accepted. He has added a clause in the said explanation that at any stage if the information is found false, he is liable for disciplinary action.

5. Enquiry was conducted later and during the course of enquiry, statement of Smt. S. Meena was recorded, wherein she has stated that she has married the first respondent; she has provided supporting photographs, ration card, birth certificate of her daughter Kavitha in which the name of first respondent was mentioned as childs father; a postal life insurance policy bond No.KT/117632P dated 11.2.1998 was also furnished wherein Smt. S. Meena is declared as a nominee with relationship as wife. The first respondent in his statement dated 13.4.2004 had accepted that Kavita is born to him. After the enquiry, the report came to be filed on 13.5.2008 wherein the charges were held to be proved. The first respondent was given opportunity to make his representation on the report. Accordingly, the first respondent filed his representation on 25.7.2008. The Disciplinary Authority on considering the materials independently and on perusal of the report and representation of the respondent No. 1, levied penalty of compulsory retirement on 31.12.2009. The appellate authority confirmed the order of compulsory retirement on 7.6.2010.

6. The first respondent challenged those orders before the Central Administrative Tribunal in OA No.381/2010 which came to be allowed by the impugned order on 17.10.2012.

7. On going through the order of the Tribunal, we find that the reasons assigned therein are unacceptable. The Tribunal has not at all confined its reasons to the facts on hand. Certain general remarks are made by the Tribunal while coming to the conclusion. Absolutely no valid reasons are assigned by the Tribunal as to why he disagrees with the conclusion reached by the authorities. The Tribunal has not considered the entire material objectively; it has proceeded casually

 

while passing the impugned order.

8. The material on record clearly reveals that Smt. S. Meena was declared as wife by the first respondent; it is also clear from the records that Manju and Kavitha are daughters of the first respondent bom through Meena. Nomination made in their favour on 17.12.1990 continued till 24.2.2004. The reasons assigned by the first respondent that he made nomination of those three persons under certain compulsion cannot be accepted at all under any stretch of imagination. If really the respondent No. 1 had not married Smt. Meena and if really Manju and Kavitha are not his daughters, he would not have nominated. Moreover, the evidence of Smt. S. Meena recorded by the Inquiry Officer clearly reveals that she is the wife of the first respondent and out of the said wedlock, two children are born. Thus the materials on record amply reveals that Meena is the wife and Manju and Kavitha are the daughters of the first respondent.

9. However, the first respondent has proceeded to change the nomination in the name of Sri. B.V. Padmamba on the ground that he has married Smt B.V. Padmamba in the year 2003. Marrying second time during the subsistence of the first marriage is illegal and opposed to the service Rules.

10. The Tribunal has proceeded to decide the matter as if it is deciding a criminal case. The theory of proving the case beyond all reasonable doubt does not arise in such matters. Such matters will have to be decided based on preponderance of probabilities.

11. In view of the above, the Disciplinary'' Authority as well as the appellate authority are justified in concluding that the first respondent is liable to be imposed penalty of compulsory retirement.

12. The first respondent was aged about 59 years at the time of passing the impugned order by the Disciplinary Authority. He was having just one year of service by then. Taking into consideration of the same, as the first respondent would be entitled for the pensionary benefits even if the order of punishment of compulsory retirement is imposed, the department has passed the order of compulsory retirement against the first respondent. The Tribunal has erroneously proceeded to set aside the order passed by the Disciplinary Authority as well as the appellate authority without furnishing any valid reason. We find that the order passed by the Disciplinary Authority is just and proper. Hence, the order of the Tribunal is liable to be quashed.

13. Accordingly, the Writ Petition is allowed The order of the Tribunal stands quashed.