

(2012) 06 GAU CK 0011

In the Gauhati High Court

Case No : WA No. 320 of 2010 and 257 of 2011

Union of India and Others

APPELLANT

Vs

Ramashankar Gupta and Others

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(2), 320(8)
Penal Code, 1860 (IPC) — Section 494

Citation : (2013) 1 GLD 109 : (2012) 4 GLT 532

Hon'ble Judges : Adarsh Kumar Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : R. Bora, Central Government, for the Appellant; R.L. Yadav and Ms. Kalpana Yadav, for the Respondent

Judgement

Ujjal Bhuyan, J.—These two writ appeals arising out of the same judgment and order dated 05.01.2010 passed by a learned Single Judge of this Court in W.P. (C) No. 2554 of 2003 have been heard together and are disposed of by this common judgment and order. The writ petition was filed by one Shri Rama Shankar Gupta challenging his dismissal from the service of Assam Rifles on the charge of bigamy. The writ petition was partly allowed by setting aside the order of dismissal from service and remanding the matter back to the disciplinary authority for imposing any penalty other than major penalty.

2. W. A. No. 320 of 2010 has been filed by the Union of India and the Assam Rifles assailing the legality and validity of the above decision of the learned Single Judge. On the other hand, W.A. No. 257 of 2011 has been filed by the writ petitioner with the prayer that his dismissal order having been set aside, he would be entitled to all the service benefits including arrear salary and that the departmental enquiry be declared as void and illegal.

3. The facts of the case may briefly be noted.

4. The writ petitioner was working as Rifleman (General duty) under 15 Assam

Rifles at the relevant point of time. By letter dated 01.09.2002 the petitioner was informed by Major Sandip Sharma of 15 Assam Rifles that his office had received a letter from his second wife Smt. Lakhi Goswami, resident of Madhav Nagar, Dist. Sivasagar, Assam, about his second marriage which is against the law. The petitioner was asked to show cause as to why disciplinary proceeding should not be initiated against him. The petitioner submitted his reply denying such second marriage and stating that he had no relation with Lakhi Goswami. He requested for 15 days time or one month's leave to enquire into the allegation levelled against him.

5. On 20.11.2002 there was a Court inquiry. The petitioner alleges that he was forced to put his signature on a blank paper which he initially refused but subsequently under heavy pressure of the Commandant, he put his signature.

6. By order dated 01.12.2002 issued by the Commandant, 15 Assam Rifles, the petitioner was dismissed from service with effect from 01.12.2002(A/N). Holding that the petitioner had not given any explanation about contracting the second marriage during subsistence of the first marriage and having pleaded guilty to the charge, the disciplinary authority took the view that the conduct of the petitioner was such as to render his further retention in public service undesirable and warranted imposition of major penalty.

7. The petitioner filed an appeal before the appellate authority on 14.12.2002 but did not receive any response. Thereafter he sent notice through his counsel to the concerned authorities of the Assam Rifles which was also not responded to.

8. Feeling aggrieved, the petitioner filed W.P.(C) No. 2554 of 2003 before this Court challenging the order of dismissal and seeking reinstatement in service with all benefits.

9. The writ petition was contested by the Assam Rifles authorities. In their counter, they stated the following:

1. At the very outset I, respectfully, beg to submit the brief facts of the case as hereunder:

That the writ petitioner (Ex. No. 153432 Rfn/GD Rama Shankar Gupta of 15 Assam Rifles, resident of Bihar State) while on OP duty at Tuli post in Nagaland came in contact with one Miss Lakhi Goswami, resident of Madhav Nagar, Haiwating, Dist. Sibsagar, Assam. The petitioner got mixed up with her and later deceiving her, he contracted marriage with her at a local temple during Jan 2002 and did hide the fact that he was already married to Smt. Maya Devi, first wife as per his service record. The instant petitioner after having good time with that Smt. Lakhi Goswami for over a year dumped her, once the unit moved from Nagaland to Manipur State. The said woman, Smt. Lakhi Goswami, in distress, wrote a letter dated 10.07.2002 to the Commandant of concerned Unit of the petitioner and on the basis of which she was called to the unit. The lady has been interrogated by the Commanding Officer of the concerned Unit, in front of the

petitioner, asking the fact and circumstances of the matter. On internal departmental inquiry, it was proved beyond doubt that it was a case of plural marriage.

3.1 further beg to submit that the petitioner was charge sheeted for his misconduct and a departmental inquiry was conducted vide the Unit Commandant Order No. A/1108/2002/2131 dated 21 Nov. 2002 and pleaded guilty. During departmental inquiry, the individual now writ petitioner has submitted a written brief stating that:

I was married to Smti Maya Devi, daughter of Shri Shiv Shankar, resident of Village Khajri, Dist. Balia, UP on 26 Jan 1991. Smt. Maya Devi frequently used to quarrel with me on various trivial matters without any reason. As a result, I had become frustrated with her behavior.

While serving in Nagaland (Zunoboto), I came across Miss Lakhi Goswami. And after I got infatuated to Miss Lakhi Goswami, I got married to her on 17 Jan 2002. Miss Lakhi Goswami is the daughter of Sri M. Goswami and is a resident of Madhav Nagar, Haiwating, Dist. Sivasagar, Assam.

I married for the second time without obtaining a legal divorce or prior Govt. sanction, due to ignorance of rule and legal aspects.

Subsequently, the writ petitioner was dismissed from service by the Commandant, in exercise of the power conferred by rule 19 of the Central Civil Services (Classification, Control and Appeals) Rules, 1965 vide order dated 01 Dec 2002, for charge of grave misconduct.

10. The learned Single Judge disposed of the writ petition by the final order dated 05.01.2010. The learned Single Judge set aside the dismissal order and remanded the matter back to the disciplinary authority for imposing any penalty other than the major penalty but held that the petitioner would not be entitled to back wages.

11. Heard Mrs. R. Bora, learned Central Govt. Counsel appearing for the appellants in W.A. No. 320 of 2010 as well as Mr. R.L. Yadav, learned counsel for the appellant in W.A. No. 257 of 2011.

12. Learned Central Govt. counsel submits that the charge against the petitioner was very serious and he having admitted his guilt, the punishment imposed was justified considering the fact that the petitioner was a member of a disciplined force. In the circumstances of the case, the punishment of dismissal cannot be said to be disproportionate to warrant judicial interference. She, therefore, prays for setting aside of the order of the learned Single Judge.

13. On the other hand, learned counsel for the writ petitioner submits that the punishment imposed was extremely harsh and disproportionate and considering the various decisions of this Court, the learned Single Judge was justified in interfering with the punishment imposed. He, however, submits that the

punishment imposed on the petitioner having been set aside, the learned Single Judge ought to have directed payment of his back wages. Additionally, he submits that the learned Single Judge having noticed the irregularities in the conduct of the departmental proceeding, ought to have declared the same as null and void. Learned counsel while referring to the decisions already taken note of by the learned Single Judge, additionally refers to a recent decision of the Hon'ble Supreme Court in the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, and contends that for the charge of bigamy, the punishment of dismissal from service would be disproportionate and would justify judicial interference and consequential reinstatement in service.

14. The rival submissions made at the Bar have been duly considered.

15. 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.

16. 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.

17. 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.

18. 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.

19. Coming to the decisions referred to by the learned Single Judge in his judgment and in terms of which the penalty of dismissal was interfered with on the ground of being disproportionate, the same may now be considered.

20. In *Trilok Singh Rawat Vs. Union of India and Others*, , a writ appeal was preferred against the judgment of a Single Bench of this Court dismissing the writ petition wherein the petitioner had challenged his dismissal from the service of the Central Reserve Police Force (CRPF) on the charge of bigamy. In that case it was argued on behalf of the appellant/writ petitioner that in a similar case, the disciplinary authority did not resort to the extreme penalty of dismissal from service. The Division Bench noticed a judgment of this Court, reported in *Prafulla Kalita Vs. Oil and Natural Gas Commission and Others*, wherein the punishment of dismissal from service on the charge of bigamy was set aside and the disciplinary authority directed to impose other lenient punishment. Following the said decision and agreeing with the contention of the appellant/writ petitioner that in a similar case the penalty of dismissal from service was not imposed, the punishment of dismissal from service was set aside, leaving the question of imposition of lighter punishment to the disciplinary authority.

21. 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.

22. In the case of *Amal Kumar Baruah Vs. State of Assam and Others*, , a Single Bench of this Court was confronted with the question of proportionality of the punishment of dismissal from service on the charge of bigamy. Before referring to the findings recorded in *Amal Kumar Baruah*(supra), the facts of that case may be briefly noticed. The petitioner was working as Armed Branch Constable.

His wife complained in writing before the Superintendent of Police that the petitioner had married another woman and thereafter he had stopped extending financial assistance to her and her four children. The petitioner was examined by the Superintendent of Police wherein he allegedly confessed that he had indeed contracted a second marriage. Thereafter a formal charge was issued against the petitioner which was followed by holding a departmental enquiry. On completion of the inquiry, the Inquiry Officer submitted his report holding that the charge stood established. Thereafter the disciplinary authority passed the order dismissing the petitioner from service. The defence of the petitioner in that case was that because of the indifferent health of his wife, to enable him to discharge his duties properly and also to look after his four children, he was compelled to contract the second marriage. A significant fact which was noticed by the learned Single Judge while deciding the case was that the report of inquiry indicated that the first wife in the course of the inquiry had virtually withdrawn her complaint by saying that after the second marriage the petitioner started looking after her and the children and that the second wife had become a part of the family.

23. The Single Bench referred to Prafulla Kalita(supra) and Trilok Singh Rawat(supra) and also examined the offence of bigamy from the perspective of the criminal law. It was observed that it is an offence which can be compounded as distinguished from other penal offences which cannot be compounded. Therefore, it was held that, when the charge of bigamy under the criminal law has been made a compoundable offence, compoundable at the volition of the affected parties, the effect of which is an acquittal of the offender, the extreme punishment imposed on the petitioner in the present case in a situation where the first wife had virtually withdrawn her complaint, cannot but be understood to be wholly disproportionate and made without due application of mind. The relevant portion of Amal Kumar Baruah(supra), is extracted hereunder:

10. The act of entering into the second marriage during the validity of the first marriage, if such second marriage is not permissible under the personal law of the concerned person, is an offence covered by Section 494 of the Indian Penal code. However, by virtue of the provisions contained in Section 320(2) of the Code of Criminal Procedure the offence u/s 494 of the Indian Penal Code is compoundable with the leave of the Court. Section 320(8) of the Cr. P.C. contemplates that on an offence being compounded in the accordance with the provisions of Section 320, the person charged with the offence stands acquitted. Section 320 of the Code of Criminal Procedure does not make all the offences under the Indian Penal Code compoundable. There are some offence which are compoundable without permission of the Court and some other offences are compoundable with permission of the Court. There is a third category of offences which are not compoundable at all. The effect of an offence being compoundable has also been noted. From the above provisions of the Cr.P.C. it will not be incorrect to come to the conclusion that the law itself treats different offences on a different, if not unequal, footing. The aforesaid fact would be relevant because it furnishes an objective basis of deciding as to what punishment should be

imposed on a delinquent in a departmental proceeding where the subject matter of the charge also amounts to a criminal offence. Punishment imposed by the employer in a disciplinary proceeding must always be by application of objective standards and not on the basis of personal perceptions of the disciplinary authority. It is here where the provisions contained in Section 320 of the Code of Criminal Procedure making the offence of bigamy a compoundable offence would furnish a reasonable, objective and acceptable basis for imposition of punishment in a departmental proceeding where the charge also in one of bigamy. For commission of misconduct under the provisions of the Assam Services (Discipline and Appeal) Rules, 1964 seven different shades of punishment starting with censure and ending with dismissal from service is contemplated. Which particular should be imposed in a particular case, undoubtedly is the prerogative of the employer. But such a decision has to be taken on an objective basis and not on individual and personal perceptions. When the charge of bigamy under the criminal law has been made a compoundable offence, compoundable at the volition of the affected parties, the effect of which is an acquittal of the offender, the extreme punishment imposed on the petitioner in the present case in a situation where the first wife has virtually withdrawn her complaint, cannot but be under stood to be wholly disproportionate and made without due application of mind. Any action without due application of mind cannot have judicial approval. If another punishment which could have brought in lesser consequences can be contemplated, the imposition of extreme punishment of dismissal has to be construed by the Court to be disproportionate.

24. 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 preponderance of probability based on some materials on record.

25. 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.

26. In another decision of this Court *Zakir Hussain Vs. Union of India (UOI) and Others*, , a Single Bench of this Court after referring to the decision in *Amal Kumar Baruah(supra)*, also took the same view that having a second wife without permission has nothing to do with the discharge of his duties as a member of the force as the misconduct alleged to have been committed by the petitioner is purely personal and familial in nature. For the reasons indicated above, we are unable to accept the said view.

27. Coming to the decision of *Krushnakant B. Parmar (supra)* referred to by the learned counsel for the writ petitioner, it is seen that the same is not a case relating to the charge of bigamy. It is a case of unauthorized absence. In the facts of that case the Hon''ble Supreme Court held that in a departmental proceeding if the allegation of unauthorized absence from duty is made, the disciplinary authority is, required to prove that the absence is willful and in the absence of such finding, the absence will not amount to misconduct. The above decision in our view does not help the case of the writ petitioner in any manner as the facts and circumstances are entirely different.

28. For all the aforesaid reasons, the appeal filed by the Union of India i.e. W.A. No. 320 of 2010 is allowed. The judgment and order of the learned Single Judge dated 05.01.2010 passed in W. P(c) No. 2554 of 2003 is set aside. Consequently, W. A No. 257 of 2011 is dismissed. We leave the parties to bear their own cost.