
(2006) 11 GAU CK 0064
In the Gauhati High Court
Case No : Writ Appeal No. 501 of 2003

Union of India

APPELLANT

Vs

Rukunuddin Laskar

RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Border Security Force Rules, 1969 — Rule 26, 26, 7, 7
Central Civil Services (Conduct) Rules, 1964 — Rule 21, 21

Citation : (2007) 1 GLT 441

Hon'ble Judges : Amitava Roy, J and M.B.K.Singh, J

Bench : Division Bench

Advocate : H.Rahman, B.P.Sinha, A.R.Banerjee, B.Choudhary, Advocates
appearing for Parties

Judgement

Mutum B.K. Singh, J.—In this appeal, the judgment and order dated 12.6.2003 passed by the learned Single Judge in W.P. (C) No. 6481 of 2000 setting aside the order dated 20.6.2000 issued by the appellant No. 3 to retire the respondent from service on the ground of unsuitability, is under challenge.

2. The facts leading to this appeal, in short, are that the respondent/writ petitioner, who was enrolled as a Cook in the Border Security Force (for short "BSF") in 1995, faced One Man Court of Inquiry in 1999 (hereinafter referred to as "the Court") constituted under the Border Security Force Rules, 1969, to enquire into the circumstances under which the respondent contracted second marriage during the subsistence of his first marriage without taking prior permission from the competent authority. The respondent participated in the enquiry by filing written statement. The Court found the respondent to be blameworthy and submitted its report recommending administrative action against him. The Commandant, BSF 200 Bn., on receiving the report of the Court, issued a notice under Rule 26 of the Rules to the respondent to show cause as to why the respondent should not be retired from service on the ground of unsuitability for violating Rule 21 of the Central Civil Services Conduct Rules,

1964 vide letter dated 15.3.2000. The respondent was asked to submit his reply on or before 15.4.2000. The respondent failed to submit any reply in response to the above notice. The respondent was however, given another chance to submit reply on or before 10.6.2000 vide letter dated 7.6.2000 (Annexure9 to the writ petition). Thereafter, the respondent submitted his reply on 8.6.2000 (Annexure10 to the writ petition). On 20.6.2000 the Commandant passed the impugned order of retirement of the respondent from service with effect from 20.6.2000 (evening) stating that the respondent had married one Smt. Farhana Begumon 15.3.1998 in violation of Rule 21 of the CSC Rules, 1964 and that it would be not proper to keep the respondent in service. The said order was communicated to the respondent vide Memo No. Estt./782/200/2000/6544644 dated 21.6.2000 (Annexure11 to the writ petition). Being aggrieved by the said order of the Commandant, the respondent approached this Court in W.P. (C) No. 6481 of 2000 for setting aside the said order of the Commandant dated 20.6.2000.

3. The learned Single Judge relying on a decision of this Court in Trilok Singh Vs. Union of India, reported in 2000 (3) GLT 558 took the view that the order of removal of the writ petitioner from service was harsh and severe and accordingly set aside the order dated 20.6.2000 and remitted the matter back to the competent authority to pass any fresh order of punishment except dismissal.

4. Heard Mr. H. Rahman, learned Assistant Solicitor General, Assam for the appellants and Mr. B.P.Sinha, learned counsel appearing for the sole respondent.

5. The learned counsel for the appellants submits that the learned Single Judge passed the impugned order without taking into consideration the contents of the provision laid down in Rule 7 of the BSF Rules, 1969 and Rule 21 of the CCS Conduct Rules, 1964. According to the learned counsel, the respondent married with second wife during the subsistence of his first wife in violation of the provision of Rule 7 of the BSF Rules, 1969 and Rule 21 of the CCS Conduct Rules, 1964. It is mandatory on the part of any Central Government employee to obtain prior permission from the competent authority under the relevant Rules if he or she is to contract a second marriage during the subsistence of the first marriage. In the instant case, the learned counsel has contended that the respondent married his first wife on 24.2.1991 and again married his second wife, Smt. Farhana Begum, on 15.3.1998 without obtaining prior permission of the competent authority and as such the respondent violated Rule 7 of the BSF Rules, 1969 and Rule 21 of the CCS Conduct Rules, 1964. Since the respondent violated the mandatory provisions of law, he was ordered to retire from service by the Commandant on the ground of unsuitability under Rule 26 of the BSF Rules, 1969. The learned Single Judge had omitted to consider the above mandatory provisions of law while passing the impugned order, the learned counsel contended, and thus the impugned judgment and order is not sustainable in law and the interference of this Court is called for.

6. The learned counsel appearing for the respondent admitted the fact of second

marriage but submitted that the second marriage took place under the compelling circumstances as the first wife of the respondent renounced the society of the respondent voluntarily. The learned counsel further contends that neither the first wife nor the second wife was examined to ascertain the circumstances under which the respondent's second marriage took place, during the Court of Inquiry and as such no chance of cross-examination was given to the respondent. Hence, the order dated 20.6.2000 is not sustainable in law and the same was rightly set aside by the learned Single Judge. It is also submitted that the punishment given to the respondent on the basis of the report submitted by the One Man Court of Inquiry is disproportionate and liable to be quashed.

7. On examination of the original records of the One Man Court of Inquiry produced before us, we find that both the first and second wives of the respondent were examined as witnesses before the Court of Inquiry and chance of cross-examination of the said witnesses has been afforded by the Inquiry Officer to the respondent, but he declined to cross-examine the witnesses. Records further reveal that the Court of Inquiry conducted its proceedings in strict compliance of the procedure laid down under Rule 173 of the BSF Rules, 1969. Hence, the submission of the learned counsel appearing for the respondent is unconvincing.

8. For better appreciation of the dispute involved in this case, the relevant provisions of the Rules are reproduced herein below. Rule 7 of the BSF runs as follows :

"7. DisqualificationNo person

(a) Who has entered into or contracted a marriage with a person having a spouse living,

or

(b) Who having a spouse, has entered into or contracted a marriage with any person, shall be eligible for appointment into Force:

Provided that the Central Government may if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule."

Rule 21 of the CCS Conduct Rules, 1964 runs as follows :

"21. Restriction regarding marriage

(1) No Government servant shall enter into, or conduct, a marriage with a person having a spouse living; and

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

Provided that the Central Government may permit a Government servant to

enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that

(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) There are other grounds for so doing.

(3) A Government servant who has marriage or marries a person other than of Indian nationality shall forthwith intimate the fact to the Government."

9. A conjoint reading of the above Rules demonstrate that no Government servant having a spouse living shall enter into, or contract, a marriage with any person and that if such marriage is permissible under the personal law applicable to such Government servant, the Central Government may permit a Government servant for such second marriage. It shows that it is mandatory on the part of the Government servant to obtain prior permission of the competent authority before entering into the second marriage during the subsistence of the first marriage. In the present case, the learned counsel appearing for the respondent frankly admitted that no prior permission was sought for before entering into the second marriage. The only point now remains for adjudication is that whether the order of retirement of the respondent on account of his second marriage is harsh, severe and disproportionate or not.

10. Under Rule 26 of the Rules, the Commandant having been satisfied that the respondent has become unsuitable for further retention in the Force, issued the order dated 20.6.2000 to retire him from service with effect from 20.6.2000 (evening). Under the said Rules it is the subjective satisfaction of the Commandant to decide as to whether an enrolled person has become unsuitable for further retention or not. However, such subjective satisfaction has always to be based on the materials on record. Records reveal, in the instant case, that the Commandant formed his satisfaction basing on the recommendation and the findings of the report of the One Man Court of Inquiry and admitted fact of second marriage of the respondent. We do not find any infirmity or illegality in the process leading to the satisfaction of the Commandant.

11. It appears that the learned Single Judge was of the view that the respondent has been removed from service by way of punishment. In our considered view, the learned Single Judge has committed an error in the factual premise while passing the impugned order. In this case, the respondent was neither removed nor dismissed from service on account of misconduct or otherwise by way of punishment. Rule 26 of the BSF Rules, 1969 only provides for retirement on account of unsuitability. We are unable to hold that the order of retirement passed in exercise of powers under the above provision of the Rules on the proved facts calls for any interference. The ruling in *Trilok Singh* (supra) is not applicable in the facts and circumstances of the present case. As stated hereinabove, the respondent was found unsuitable, in the opinion of the Commandant, for further retention in the force and, accordingly, he was ordered

to retire from service as permitted under the provisions of the Rules. Hence, the submission of the learned counsel for the respondent has no force. We, therefore, do not find any illegality or infirmity in the procedure of the Court of Inquiry and passing the impugned order dated 20.6.2000 by the Commandant. 12. In view of the above discussion and consideration, we are of the view that the impugned order dated 12.6.2003 passed by the learned Single Judge needs interference. In the result, the order dated 12.6.2003 passed by the learned Single Judge is quashed and the appeal stands allowed. The interim order stands vacated. No order as to costs.