



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

W.A. No. 357/2022

1. The Union of India
Represented by the Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat
New Delhi-110001
2. The Inspector General (NCR Sector)
-cum-Revisional Authority
Central Industrial Security Force,
Block-11, 6th Floor,
Central Government Office Complex,
Lodhi Road, New Delhi-110003
3. The Deputy Inspector General
-cum-Appellate Authority
Central Industrial Security Force (GBS),
16/11 Jamnagar House, New Delhi-110001
4. The Senior Commandant,
Disciplinary Authority,
Central Industrial Security Force Unit (GBS)
North Block, New Delhi
5. The Commandant,
Central Industrial Security Force Unit,
P.O.-Burnpur, Dist.-Bardhaman,
WB, PIN-713325
6. Pauliankap, Deputy Commandant
-cum-Enquiry Officer,
Central Industrial Security Force Unit,
GBS, New Delhi, PIN-110001

.....Appellants/Respondents

Versus

Pranab Kumar Nath,
Son of Late Kamaleshwar Nath,
Resident of Village-Dohali,
P.O.-Batarhat,
P.S.-Palashbari, Dist-Kamrup,
Assam, PIN-781122

.....Respondent/Writ Petitioner

Advocate for the Review Petitioner : Ms. B. Sarma, Advocate

Advocate for the Respondents : Ms. Q. Ahmed, learned Counsel
Appearing for Mr. T. Deuri, Standing Counsel,
ECI

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Date of Hearing & Judgment : 18.01.2023

JUDGMENT AND ORDER (ORAL)

[N. Kotiswar Singh, J.]

Heard Ms. B. Sarma, learned counsel for the appellants. Also
heard Ms. Q. Ahmed, learned counsel submitting on behalf of Mr. T.
Deuri, learned Counsel for the respondents/writ petitioner.

2. The present appeal has been filed against the judgment and order dated 21.07.2022 passed by the learned Single Judge of this Court in WP(C) No.8078/19 by which the learned Single Judge interfered with the penalty of "Dismissal from Service with immediate effect" imposed on the respondent/writ petitioner vide order dated 01.07.2017 on the ground of bigamy.

3. The writ petitioner was serving as a Constable/GD in the Central Industrial Security Force (CISF). On 18.03.2016, after a written complaint was filed by the wife of the petitioner, namely, Smt. Chandana Nath, a disciplinary proceeding was initiated against him for marrying another woman, namely, Smt. Parthana Das during the subsistence of the earlier marriage. On conclusion of the inquiry he was found guilty to the charge of having contracted a second marriage during the subsistence of the earlier marriage in violation of Rule 18 (B) of the CISF Rules, 2001, and accordingly, dismissed him from service vide order dated 01.07.2017. Thereafter, the petitioner preferred an appeal against the order of dismissal, however, the authorities rejected his appeal vide order dated 20.09.2017. Thereafter, revision preferred by the petitioner against the said dismissal order was also rejected on 26.07.2018 by the Revisional Authority.

4. Being aggrieved, the writ petitioner approached this Court challenging the said dismissal order dated 01.07.2017 on the ground that the penalty imposed was disproportionate to the misconduct proven and sought for imposing a lesser punishment. In this connection, the writ petitioner relied on the decision of this Court *Trilok Singh Rawat vs. Union of India, 2000 (3) GLT 558*.

5. The appellants as respondents therein contended that the writ petitioner was found violating Rule 21 of the Central Civil Services (Conduct) Rules, 1964 and Rule 18 (B) of the CISF Rules, 2001 which prohibits any Government servant of contracting a second marriage during the subsistence of the first marriage and as such dismissal of the petitioner from service was commensurate to the charge proved.

Learned counsel appearing for the respondent relied on the decision in *Kursheed Ahmad Khan vs. State of Uttar Pradesh, (2015) 8 SCC 439* and *BSM (PG) College vs. Samrat Sharma, (2019) 16 SCC 56* to support the contention.

6. However, the learned Single Judge vide order dated 21.07.2022 by relying on the decision of *Trilok Singh Rawat (supra)*, set aside the order of dismissal dated 01.07.2017 and interfered with the order of dismissal from service of the respondent/petitioner and remanded the matter to the Disciplinary authority for imposing any other penalty on him other than the penalty of dismissal.

7. It is true that Courts while dealing with penalty imposed on a delinquent normally does not interfere with the quantum of punishment, unless it shocks the conscience of the Court. However, there are no clear criteria laid down in this regard to define as to what shocks the conscience of the Court, inasmuch as, it would depend on facts of each case.

8. In the present case what comes from the records is that the writ petitioner has a child from the first marriage who is about 15 years and if the said penalty of dismissal is to be upheld, it will cut off the only source of income not only for him but also for his first wife, her daughter and his second wife. The writ petitioner appears to be the sole bread earner, on whom his first wife, his daughter and his second wife appear to be dependent upon. It can be observed from the records that in course of the inquiry the first wife of the petitioner, Smt. Chandana Nath had made a request to the authority to look after her and her child who would be about 15 years by now, which clearly shows the sense of dependency on the writ petitioner which she can legitimately demand from her husband.

9. Dismissal is the most extreme form of punishment which can be imposed upon a Government employee, which has the effect of not only cutting off the source of income, thus depriving him and his dependents of the means of sustenance. Apart from it, he will be not

eligible for reemployment in a public sector. Thus, the civil consequences it entails are of extreme nature which in our opinion, should not be ordinarily invoked unless the misconduct is of such nature that there is no other option but to impose such a punishment. There can be various other serious misconducts for which this most severe form of punishment can be imposed.

10. In the present case, in our opinion though this act of conducting of second marriage can be said to be an act of indiscipline, inasmuch as, contracting a second marriage during the subsistence of the first marriage was in violation of rules, yet, it cannot be said that it is one of most heinous form of misconducts for which he must be necessarily visited with the punishment of dismissal. The records also do not indicate of any serious physical violence perpetrated upon the first wife or the daughter of the writ petitioner or any other act of cruelty, though there is allegation that the writ petitioner had beaten his first wife and daughter. The writ petitioner appears to have contracted the second marriage on account of not being happy in the marital life with his first wife.

11. Under the circumstances and taking a holistic view of the entire circumstances as reflected in the records, this Court, without condoning the said act of misconduct, is of the view that imposing the punishment of dismissal to the writ petitioner would cause serious

economic hardships not only to the petitioner himself but also to his first wife and his daughter and also to the other woman. The punishment of dismissal imposed on the writ petitioner will deprive the family members of financial support and also may drive them to penury. In our opinion devastation which may be caused, more particularly, the financial hardships which may be caused by the penalty imposed to the family members can be one of the parameters for judging as to whether the penalty imposed is disproportionate or shocking. In our view, keeping in mind the misconduct proved, if a lesser penalty could have been also imposed for the same misconduct, the authorities must examine the impact which will have not only to the employee concerned, but also to all of his family members who are entirely dependent on him, before taking the severest and ultimate form of punishment under the rules.

12. Accordingly, for the reasons discussed above, we are of the view that dismissal of the writ petitioner from service in this case will amount to be disproportionately harsh punishment and accordingly, we uphold the order passed by the learned Single Judge in setting aside the order of dismissal, however, for different reasons as discussed above. We accordingly direct that the Disciplinary authority may pass any other lesser penalty on the petitioner other than the penalty of dismissal.

13. The appeal is accordingly dismissed by affirming the direction of the learned Single Judge passed on 21.07.2022 in WP(C) No.8078/2019.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant