

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 606 of 2009

Writ Petition (Civil) No. 870 of 2000

Major Alok Kumar Mishra

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. A.B. Pandey, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

J U D G M E N T

13.02.2012

S.S.Dhillon, Member:

1. This writ petition originates from a dismissal under Army Act Section 19 read with Army Rule 14(4)(b) whereby the Petitioner's services were terminated vide order of 15th November 1999. The Petitioner urged that this order of 15th November 1999 was illegal, vitiated with malafide and violative of the various provisions of Army Act and Rules and against the principles of natural justice.

2. The Petitioner was commissioned on 7th June 1980 into the infantry and was posted to 10 Garhwal Rifles. The Petitioner has highlighted his various professional achievements while being deployed in the Sri Lanka Operation, Operation Pawan, at Siachin Glacier and in the counter insurgency operations in Manipur, Nagaland and Kashmir. The Petitioner was awarded

Northern Army Commendation Card in January 1993 for rendering meritorious and commendable service in the Hazratbal Shrine Operation.

3. The Petitioner was posted with the unit when it was located at Dehradun from December 1981 to July 1985. During this period at Dehradun he befriended Mr. Devendra Gharti who became very close to the Petitioner. Mr. Devendra Gharti's sister Mrs. Usha was married to Hav. Dinesh Chettri who was also serving in the Indian Army and she was an educated lady who was employed as Principal of Army School at Birpur, Dehradun. Mr. Devendra Gharti over a period of time became a very dear friend of the Petitioner and used to discuss his family matters with him, whereby the Petitioner got to know that Mrs. Usha did not enjoy good relations with her husband and has been suffering a lot. In January 1984, the Petitioner got engaged to Ms. Jyotsna Mishra and married her on 24th November 1984. When the Petitioner and his wife came to Dehradun after the wedding, they hosted a party on 4th January 1985 to which Mr. Devendra Gharti was also invited. Tragically, when Mr. Devendra Gharti was returning from the party he met with a motorcycle accident and succumbed to his injuries. In July 1985 when the Petitioner moved with his unit to a field area in Jammu & Kashmir, his wife Mrs. Jyotsna, continued to stay at Dehradun and used to meet the Gharti family and Mrs. Usha quite frequently. The marital disharmony between Mrs. Usha and her husband Hav. Dinesh Chettri continued to increase and in November 1986 when their relations reached a breaking point, Mrs. Usha requested the Petitioner's wife Mrs. Jyotsna to look after her two daughters as she had decided to separate from her husband Hav. Chettri. In August 1988 Mrs. Usha filed a suit for divorce in the court of

Civil Judge, Dehradun and the Petitioner and his wife Mrs. Jyotsna not having any biological issue of their own, and having developed a strong liking for the two daughters of Mrs. Usha, the Petitioner wanted to adopt the two daughters of Mrs. Usha. However, since the age gap between the Petitioner and the elder daughter of Mrs. Usha was slightly less than 21 years a legal adoption was barred under the provisions of the Hindu Adoption and Maintenance Act.

4. When the unit of the Petitioner came to Jalandhar in November 1988 his wife moved from Dehradun and joined him in Jalandhar. By this time, Mrs. Jyotsna had become deeply attached with the two children of Mrs. Usha. Since they could not adopt the two children because of the age gap, Mrs. Jyotsna on 22nd November 1988 filed a suit for divorce in the court of District Judge, Jalandhar seeking dissolution of the marriage. However, at this time Mrs. Jyotsna was on the family way and was being treated at Military Hospital, Jalandhar. Simultaneously in February 1989, Mrs. Usha and her husband Hav. Dinesh Chettri settled all their disputes amicably and on 1st March 1989 Mrs. Usha was granted a divorce from her husband Hav. Dinesh Chettri. At the time of divorce Mrs. Usha was also pregnant. Immediately thereafter Mrs. Usha alongwith her two daughters moved to Jalandhar, so that they could look after the Petitioner's wife Mrs. Jyotsna, during the delivery. Mrs. Jyotsna was admitted in Military Hospital on 28th March 1989 and a son was born to her the same day. It was only on 1st April 1989 i.e. after the birth of his son on 28th March 1989 that the Petitioner got to know from his advocate that the Civil Court, Jalandhar had granted him a divorce from his wife Jyotsna on 17th January 1989. On 8th April 1989 the Petitioner and Mrs. Usha were married for the sake of adoption of the daughters of Mrs. Usha.

5. Learned counsel for the Petitioner urged that all the above actions have been taken by the Petitioner in accordance with the Army Rules and Instructions and he had kept the Army authorities informed of all developments in his personal life. The Petitioner had informed his Commanding Officer Col. S.M. Malik about all the events and actions including the marriage with Mrs. Usha and had produced all the relevant documents required for publication of necessary Part II orders. The Petitioner had meticulously followed the Army Regulations and had kept the Army authorities informed of all developments in his personal life at every stage and had proceeded in accordance with law. Initially the Army authorities resisted publication of a Part II order declaring the two daughters of Mrs. Usha as his adopted daughters but on 11th September 1989 a son was born to Mrs. Usha at Military Hospital, Jalandhar and a Part II order was accordingly published. In November 1989 when the Petitioner was posted to 13th Assam Rifles in Nagaland he kept his family at the Battalion HQ at Naginimora till March 1992. Since the children were young, the Petitioner and his wife Mrs. Usha decided to keep a lady governess, for which they advertised in a local paper, but when Mrs. Jyotsna offered herself for the job, considering her suitability to look after the children, the Petitioner accepted her proposal and gave her this job. The Petitioner informed his Commanding Officer of this development and there were no objections or queries raised on this issue.

6. In July 1993 the Petitioner was posted back to his unit 10 Garhwal Rifles and in January 1994 the unit of the Petitioner moved to Jamnagar. At this time his unit was commanded by Col. J.S. Dalal who was his CO and all his problems began thereafter. Notwithstanding the fact that the Petitioner

had informed his Commanding Officer of all the details relating to himself and his family without concealing any relevant fact, his Commanding Officer Col. J.S. Dalal became very inimical towards him and gave him very poor ACR for the year 1995-96. On 10th January 1996, a Court of Inquiry was convened for the following purpose:-

“Investigate into the circumstances under which IC 38697-H, Maj. A.K. Mishra of 10, Garhwal Rifles, during the period 1988/89, allegedly indulged in plural marriage for a temporary phase, stealing affections of a soldier’s wife, such like wrong conduct in which he has allegedly been residing with present as well as his ex-wife simultaneously in his house at Jamnagar Cantt.”

7. During the Court of Inquiry, the Petitioner learnt that the entire proceedings have been initiated on the complaint of his Commanding Officer Col. J.S. Dalal and he sought a copy of the complaint which was never given to him. On conclusion of the Court of Inquiry a show cause notice was given to him on 20th January 1997 asking him to show reason why action should not be taken against him in accordance with Section 19 of the Army Act read with Rule 14 to terminate his services. Immediately thereafter the Petitioner filed a CWP No. 1313 of 1997 before the Hon'ble Delhi High Court which disposed of the petition on 26th March 1997 with the following observations:

“....Erroneously, the Petitioner instead of giving reply to show cause notice has approached the Court. However in the interest of justice, reply to show cause notice be filed within three weeks from today, and the same shall be considered within time and the authority concerned may take the reply of the petitioner and pass a reasoned order.

In case the petitioner would still be aggrieved by the order passed by the concerned authority, he shall be at liberty to approach this court.”

8. Thereafter the Petitioner filed his detailed reply to the show cause notice on 15th April 1997. Learned counsel for the Petitioner alleged that after almost 2½ years, Government of India issued a dismissal order on 15th November 1999, when the Petitioner was merely 7 months short of completing his pensionable service. This was against all principles of natural justice.

9. The Petitioner urged that Section 122 of the Army Act had been violated, in that the issue was more than three years old and hence disciplinary and administrative proceedings were bad in law in view of Section 122 of the Army Act which is extracted below:

“Section 122. Period of limitation for trial.-(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years [and such period shall commence,-

- (a) on the date of the offence; or
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or
- (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the

offence or to the authority competent to initiate action, whichever is earlier.]

10. It was also urged that contrary to the directions of the Hon;ble Delhi High Court that the Respondents should pass a reasoned order in this matter, no such reasoned order was passed and a very curt one paragraph termination notice was served to him which is as given below:

“And whereas, from the records the central govt. Is satisfied that the conduct of the said Maj A K Mishra as established by the Court of Inquiry in this case is prejudicial to the high standards of discipline and established social norms and that the trial of the said Maj A K Mishra by a Court Martial is inexpedient. The Central Govt, after taking into consideration the entire circumstances of the case and the recommendations of the COAS, is satisfied that further retention of the said Maj A K Mishra in Army is undesirable.”

11. Respondents argued that the Petitioner has very cleverly fabricated the story justifying his actions in order to gain the sympathy of the Court. All along the Petitioner has attempted to show that his actions are bonafide and that he has not contracted plural marriage at any stage in his life. There is no doubt that the Petitioner has very cunningly stage managed the sequence of events so as not to enter in plural marriage, but that is not the charge against him. The gravamen of the charge has been properly and eloquently covered by the Brigade Commander in his order on the Court of Inquiry proceedings, which is extracted as below:

“In order to maintain correct moral stds of offrs, impact on the moral fibre of men in stn, adverse impact on the Cantt life and ethos of service, the

situation created by the offr is not acceptable. Hence,
I recommend the following:-

(a) Formal cognizance be taken and discp action be initiated against IC-38687H Maj AK Mishra of 10 GARH RIF for the following:-

(i) Keeping his ex wife in his house in Mil Cantt alongwith his present wife and without permission of concerned auth.

(ii) Moral lapses in 1988-89, during which period when married to Mrs. Jyotsna (first wife) he was having a relationship with Mrs. Usha (His present wife), who at that time was married to Hav D K Chettri of 9 GR (now retired).

(iii) Unofficer like conduct.

(b) I further recommend that under the provision of Army Rules, the offr's services be dispensed with."

Accordingly, issuance of the charge against him was that under the garb of visiting rights, employment as a governess, adoption of daughters, attending tailoring and designing course at Jamnagar etc., he had reached such an arrangement within the house wherein the former wife was appointed as the governess, and the latter became his legal wife. He was thus able to keep both ladies in the same house and brought about an absolutely unwarranted situation which has adverse manifestations in a military cantonment. Despite warnings from his CO, he has often continued to keep both ladies in his house, without permission either from Station HQ or his CO. He was evidently guilty of unofficer like conduct, moral lapse, and even though not

conclusively proved, he, by inference could have indulged in immoral conduct and possibly, adultery.

12. Learned counsel also submitted that it was because of the evidently smooth relationship that the Petitioner enjoyed with both the ladies that the authorities considered it impractical and inexpedient to conduct a GCM and instead resorted to administrative action of dismissal under Section 19 of the Army Act read with Rule 14. It was emphasised by Respondents that such action was taken in organisational interest and no malafide can be attributed to this decision.

13. Learned counsel for the Respondents urged that the action against the Petitioner was within the limitation in terms of Section 122 (b) of the Army Act (as amended vide Army (Amendment) Act, 1992) according to which three years period commences as follows:

“Sec. 122 (b): Where the Commission of offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier.”

In the case of the Petitioner, the competent authority to take action was the Chief of Army Staff. It was admitted by the Respondents that the Petitioner had informed the authorities about his divorce with Mrs. Jyotsna and also his subsequent marriage with Mrs. Usha. However, the authorities were never informed, nor were they aware, about the Petitioner keeping his first wife, even though divorced as the alleged governess for the children from the second wife. Therefore he had kept the two ladies simultaneously with him at

his house in Jalandhar and Jamnagar without informing his Commanding Officer at either station. Resultantly the competent authority was not aware about the Petitioner's aforesaid activity till the end of December 1995 and issuance of a show cause notice to the petitioner on 1st March 1997 is not barred by limitation. The competent authority was of the view that for the Petitioner to keep his first and second wife simultaneously at his house has set a bad example for his troops and it was only after examining all aspects that the Petitioner was issued a show cause notice in organisational interest.

14. Learned counsel for the Respondents argued that it was inconceivable that although the divorce from Mrs. Jyotsna had been granted by the Civil Court on 17th January 1989, he came to know of it only on 1st April 1989. It was submitted that the Petitioner deliberately did not inform the authorities about his divorce with Mrs. Jyotsna as he wanted to avail the benefit of medical facilities for his ex-wife and made false entries by getting her admitted on 28th March 1989 as his wife, when he knew fully well that the divorce decree has been passed on 17th January 1989.

15. Respondents reiterated the fact that although the Petitioner has sent information regarding his divorce and marriage with Mrs. Usha, he never informed authorities that he was keeping both the women with him in his house at the same time. It was also argued that the petitioner had given an advertisement in the local paper for a governess only to subvert the system as nowhere in this country does any person, least of all an Army person in Nagaland, give an advertisement in the paper for employing of a lady as his governess. This was a false concocted story to hide from the authorities the

fact that the person he finally employed as a governess i.e. Mrs. Jyotsna was his first wife and this he had not intimated to his Commanding Officer or to any other authority. Respondents further argued that immediately on receipt of information about the fact that he was keeping both the ladies with him in his house, a Court of Inquiry had been ordered.

16. Respondents urged that the action taken by the Commanding Officer in reporting his incident to the higher authorities was bonafide and did not suffer from any malafide or ill will. As a Commanding Officer he is responsible to the organisation for the smooth and efficient running of his unit as well as to ensure discipline and observance of moral and ethical conduct by all ranks. When he noticed an infringement in the moral and ethical conduct of the Petitioner he was fully justified in reporting the matter to the higher authorities and seeking their intervention to conduct a Court of Inquiry so as to arrive at the facts. A Court of Inquiry was duly constituted to enquire into this incident and Petitioner was given fully liberty to put across his case as well as to examine the witnesses. A show cause notice was issued to the Petitioner on conclusion of the Court of Inquiry on 20th January 1997 wherein the gist of what was held against the officer was encapsulated and he was asked to show cause as to why action should not be taken in accordance with Section 19 of the Army Act read with Rule 14 to terminate his services. The reply of the Petitioner to the show cause notice was considered in depth and all issues raised by him were meticulously examined. Such examination, alongwith recommendations of Commanders in the chain of command, was done by Army HQ who found the reply to the show cause notice as unsatisfactory and recommended to the Ministry of Defence that the services of the Petitioner be

terminated. Subsequently the case in its entirety was deliberated in the Ministry of Defence and the Government, after considering the evidence available on record and the reply to the show cause notice submitted by the Petitioner, as well as the recommendations of the Chief of Army Staff, was satisfied that it was a fit case for invoking the provisions of Section 19 of the Army Act. Furthermore, the impugned order dated 15th November 1999 is not contrary to the directions of the Hon'ble Delhi High Court given in their judgment dated 26th March 1997.

17. Considering the fact that it has been established in the Court of Inquiry that the Petitioner kept both his first and second wife with him in his house simultaneously and that it set a bad example to the troops and to the Army environment, the authorities were within their rights to take action in accordance with law. We do not find any need to interfere with the impugned order dated 15th November 1999. Accordingly, we do not find any merit in the petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 13, 2012
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