

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A NO. 235 of 2011

IN THE MATTER OF:

Ex RFN/WM Jagsir Singh**APPLICANT**
Through : Mr. Rohit Pratap for Mr. A.K. Trivedi, counsel for the
applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Mr. Ajai Bhalla counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 16.03.2012

1. The OA No.235/2011 was filed in the Armed Forces Tribunal on 31.05.2011.
2. Vide this OA, the applicant has prayed for quashing and setting aside of the order of termination from service dated 03.06.2006 (Annexure A-1) with all consequential benefits and compensation.
3. Brief facts of the case are that the applicant was enrolled in the Indian Army in the Regiment of Rajputana Rifles as a tradesman (Washer Man). After completion of training he was posted to 19 Rajputana Rifles (19 Raj Rif) as Rifleman/Washerman (Rfn/WM).

4. The applicant was married on 22.11.1997 to Ms. Anita and their marriage was solemnised under the Christian rites. However, no child was borne out of the said wedlock. Owing to certain differences, the relationship between them got further strained. It is further alleged that the applicant was under tremendous family pressure and therefore, became a patient of 'Depression'.

5. It is contended by the applicant that Ms. Anita, wife of the applicant filed a complaint on false and frivolous charges at the police station Guruhar Sahai Ferozpur (Punjab) under Sections 494 and 498-A IPC read with Section 120-B of the IPC alleging that the applicant has contracted plural marriage with Ms. Sonia. The matter was projected to the respondent authorities by the police, by the applicant himself and as well as by the civil authorities. In due course, the applicant was arrested in the matter and was also released on bail by the competent Court.

6. It is alleged by the applicant that Ms. Anita wife of the applicant again wrote to the respondents wherein she repeated the same false allegations that have been mentioned in the FIR filed earlier.

7. It is further alleged that the respondents, based on the complaint filed by Ms. Anita, without conducting any inquiry or rendering any opportunity to the applicant to explain his case, terminated the services of the applicant in a most arbitrary manner under the provisions of Army Act 20(3) read with Rule 17 and Para 333(c) of the

Regulations for the Army (1987 edition) on the ground of contracting plural marriage without prior sanction.

8. The applicant was struck of the strength vide the impugned order dated 03.06.2006. It is alleged that no discharge order was issued.

9. The applicant contended that the Civil Court of Addl. Chief Judicial Magistrate, Ferozepur vide its order dated 11.02.2011 exonerated the applicant from all the charges levelled against him by Ms. Anita and disposed off the case (Annexure A-2). The applicant immediately moved to the Unit at Jammu alongwith the Court order but the unit refused to entertain him and advised him to report to Regimental Centre and Record Office at New Delhi. As such, the applicant reported to the Regimental Centre and Record Office at New Delhi and made another representation but the same has not been disposed off till date.

10. Learned counsel for the applicant argued that Ms. Anita w/o applicant had filed a false case against the applicant for plural marriage and cruel treatment. But finally the Civil Court had absolved him. As such, the applicant was not guilty of plural marriage despite the allegations made by Ms. Anita. He also argued that no show cause notice was issued to the applicant before taking extreme action of termination from service. He further argued that since the matter has been subjudice, the applicant could not have been discharged during

the pendency of the case in terms of Regulation 333(C) of the Regulations for Army, 1987. As such, the discharge was illegal and the discharge order needs to be quashed.

11. Learned counsel for the respondents submitted that the applicant was dismissed from service under Army Act Section 20(3) read with Army Rule 17 and Para 333 (c) of Regulations for Army, 1987 on 03.06.2006 for contracting plural marriage. The applicant had rendered 11 years and 40 days of service including 17 days of non-qualifying service.

12. Learned counsel for the respondents further argued that as per service record, the applicant was married to Smt. Anita D/o Shri Fakir Mashi R/o Village Sandara, Tehsil Zina, District Ferozpur on 22.11.1997. The declaration certificate rendered by the applicant is at Annexure R-1.

13. Learned counsel for the respondents further argued that on 16.10.2001, Smt. Anita filed a criminal case No.604 in the court of Chief Judicial Magistrate, Ferozpur seeking maintenance allowance. The case came up for hearing before the Magistrate on 03.08.2004 when the court was pleased to grant maintenance allowance of Rs.1200/- per month to Smt. Anita. In compliance of the said Court order, the GOC-in-C, Western Command accorded his sanction vide his letter dated 13.07.2005 for recovery of Rs.1200/- per month from the pay and allowances of the applicant (Annexure R-2).

14. He further argued that subsequently Smt. Anita sent a letter to the respondents stating that her husband had got re-married to one Smt. Sonia D/o Shri Jagtar Singh R/o Village Sandhhara, Tehsil Zina, District Ferozpur without giving divorce to her (Annexure R-3). He further submitted that based on the complaint dated 18.12.2004 submitted by Smt. Anita, the respondents approached Zila Sainik Welfare Office, Ferozpur for verification of the complaint made by Smt. Anita. The Zila Sainik Welfare Officer, Ferozpur confirmed the fact of second marriage of applicant with Smt. Sonia as averred in the complaint vide their letter dated 28.04.2005 (Annexure R-4). Thereafter, the respondents initiated action against the applicant in terms of Para 333(c) of Regulation for Army, 1987 for contracting second marriage without proper sanction by the competent authority. A show cause notice was issued to the applicant by HQs Western Command dated 24.12.2005 (Annexure R-5). The applicant replied to the said show cause notice on 12.01.2006 (Annexure R-6). Therein he confessed to contracting of second marriage with Ms. Sonia without divorce to his earlier wife.

15. Learned counsel for the respondents further submitted that based on the show cause notice and the reply received thereto, the competent authority took a decision to terminate the services of the applicant w.e.f. 03.06.2006 under the provisions of Section 20 of Army Act read with rule 17 of Army Rules and para 333(C)(c) of Regulations for the Army 1987 (Annexure R-7 and R-8 respectively).

16. Learned counsel for the respondents further emphatically denied that the applicant ever approached the Regimental Centre or the Record Office at Delhi Cantt. after the alleged decision in his favour by criminal/civil court till date.

17. We have heard both the parties at length and have also examined the documents on record.

18. The respondents were careful to have carried out an independent investigation through the District Sainik Welfare Officer, Ferozepur. Based on the request of the respondents dated 16.02.2005 and 07.04.2005, a detailed report of District Sainik Welfare Officer dated 28.04.2005 (Annexure R-4) was made. In this report it was clearly stated that during the subsistence of the first marriage with Ms. Anita, the applicant remarried Ms. Sonia. As per his own reply, Ms. Anita was married to applicant on 22.11.1997. During the subsistence of this marriage, he got remarried to Smt. Sonia on 22.02.2004. In that report it has also been mentioned that criminal case alleging of plural marriage is also pending in Civil Court. This fact was within the knowledge of the respondents.

19. We have also examined the show cause notice issued on 24.12.2005 to the applicant. This was issued by Lt Col MS Grewal, SO (D&V) for GOC-in-C. After examining the files we are satisfied that the SCN was issued by the GOC-in-C and was conveyed by Lt Col MS Grewal. Therefore, the SCN was in order.

20. We also perused that in the reply dated 12.10.2006 to the SCN dated 24.12.2005, the applicant himself conceded to that he was married to Ms. Anita on 22.11.1997 as per Christian rites. He has further conceded that since Ms. Anita was staying separately and he was giving her maintenance allowance of Rs.1200/- per month. Thereafter, since he was not aware about the restrictions regarding plural marriage while serving in the armed forces, he got remarried to Smt. Sonia on 22.02.2004 with the full consent of Smt. Anita. This marriage was contracted as per the Sikh rites. Following this, Smt. Anita filed a case against him on 03.08.2004 for plural marriage. He has further stated that after one year or so, due to various reasons Smt. Sonia Rani and the applicant separated and finally on 10.02.2005 secured a divorce from Smt. Sonia Rani. The applicant obtained a certificate from the concerned Panchayat.

21. The applicant further stated that he wanted to now stay with Smt. Anita and since he is the only bread earner in the family, his services may not be dispensed with (Annexure R-6).

22. On 12.04.2006, a letter of termination of service was issued but the competent authority has not gone through the papers. The proceeding is based on the investigation report in which it has been mentioned that the case is pending before Civil Court. The authority should have wait for the outcome of that case.

23. We have carefully examined the report rendered by the District Sainik Welfare Officer dated 28.04.2005. At para 4 of the said report, it has been stated that *“It is further submitted that second wife of Jagsir Singh, Smt. Sonia got divorce but first wife of RFN Jagsir Singh, Smt. Anita has not got divorce. She filed a case in the hon'ble Court. It is for your information and further necessary action please.”*

24. Para 333(c) of the Regulations for the Army, 1987 states as under:-

*“When it is found, on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. **In cases where cognisance has been taken by civil court of competent jurisdiction the matter should be treated as subjudice and the decision of the court awaited before taking any action.** When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex-post-facto sanction can be accorded as such marriages are contrary to the law of the land.”*

25. In view of the above, it was incorrect and illegal on the part of the respondents to have terminated the services of the applicant under

Section 20 of the Army Act and Army Rule 17 read in conjunction with Para 333(c) of the Regulations for the Army, 1987. The order of termination of service dated 03.06.2006 is passed before the finalisation of criminal case filed by his wife Ms. Anita alleging contracting second marriage. It is also pertinent to note that ultimately he got acquitted in that case. He further wrote to the respondent authority to do the needful in that respect but his application has not been disposed off.

26. As such, the impugned order passed for termination of the services of the applicant dated 12.04.2006 is hereby set aside but we do not consider the prayer to reinstate him back in service at this stage but as he has already served near about 11 years of service, therefore, he deserves redressal.

27. The applicant will be deemed to be in service till he would have attained minimum pensionable service in the same rank and will be deemed to have retired on that day accordingly. He shall be entitled to all pensionary benefits thereto. No orders as to back-wages. The OA is partially allowed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

**Announced in the open Court
on this 16th day of March, 2011.**