

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 852/2020

Ex. CFN Kishor Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Asit Kumar Roy, Advocate
with Mr. Anand K. Chauhan, Advocate
For Respondents : Mr. Anil Kr Gautam, Sr. CGSC
for R 1-5
None for R-6 and R-7

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007 the applicant has filed the present application seeking to quash the order dated 20.12.2003 passed by the GOC-in-Command, Northern Command dismissing him from service and the consequential orders and actions taken thereafter. The applicant further seeks compensation of ₹15,00,000/- for the alleged rash and negligent acts causing defamation and mental agony and prays for reinstatement in service with continuity of service, seniority, salary and all consequential benefits..

*OA 852/2020
Ex CFN Kishor Kumar*



2. The brief facts of the case are that the applicant was enrolled in the Army (Corps of EME) on 27.12.1993 and claims that at the time of his enrolment he had stated his marital status as single. He asserts that he married one Smt. Shashi Prabha on 12.06.2000 according to Hindu rites and customs and that her name was duly recorded as his legally wedded wife in the official service records maintained by the Indian Army. It is alleged that Respondent No. 6 Col. Pradeep Arora, the then Commanding Officer of the applicant, became annoyed and hostile towards him after the applicant addressed an application dated 21.08.2002 directly to the Director General of EME seeking a choice posting on compassionate grounds, owing to his mother's paralytic ailment without routing it through the proper channel. The said application, along with supporting documents (Annexures A2 collectively) was submitted after Respondent No. 6 had earlier declined to recommend the applicant's compassionate posting request. The applicant contends that this incident provoked Respondent No. 6 who driven by personal animosity began targeting him. The applicant alleges that Respondent No. 6 in collusion with Hav. Gajendra Prasad Yadav (a relative of Respondent No. 7 Nirmala Devi) made a false complaint implicating the applicant in a fabricated case of plural marriage with the mala fide intention of securing his dismissal. It is stated that sometime in August 2002 the respondents managed to

procure a complaint from Respondent No. 7 Nirmala Devi claiming to be the applicant's wife and alleging that he had contracted a second marriage. The said complaint (Annexure A3) stated that she had married the applicant on 25.06.1991 at Village/PO Srinagar, Distt Madhepura, Bihar, and that a daughter was born on 15.03.1994. She further alleged that the applicant had neglected her and remarried another lady whose name stood recorded in the service records. The applicant states that upon receipt of this complaint on 28.11.2002 Respondent No. 6 along with security personnel allegedly compelled him at gunpoint to admit the allegations and to agree to pay maintenance to Respondent No. 7 under threat of being shot dead and declared a war casualty. Under such coercion and misrepresentation, the applicant purportedly submitted an application (Annexure A4) admitting to pay maintenance allowance under Section 91(i) of the Army Act in response to a show cause notice issued by the Northern Command. Respondent No. 6 thereafter passed an order under Section 91 of the Army Act on 10.09.2003 (Annexure A5) granting maintenance to Respondent No. 7 purportedly based on the applicant's coerced admission. Subsequently a show cause notice dated 22.03.2003 (Annexure A6) was issued to the applicant by the Headquarters, Northern Command alleging that he had contracted a plural marriage with Smt. Shashi Prabha during the subsistence of his first marriage with Smt. Nirmala

Devi, in contravention of the Army Act and Para 3(3) of the Regulations for the Army, 1987. The applicant claims that he sought copies of the original complaint and supporting documents and submitted a detailed reply (Annexure A7 dated 05.07.2003) clarifying his position and denying the allegations. However no inquiry was conducted, no defence opportunity was granted and without due consideration of his explanation, he was dismissed from service by order dated 10.01.2004 (Annexure A1) under Section 20(3) of the Army Act read with Rule 17 on the charge of contracting plural marriage in violation of Para 333(C)(c) of the Defence Service Regulations for the Army, 1987.

3. The applicant contends that his dismissal was the outcome of mala fide actions by Respondent No. 6 based on a false and fabricated complaint by Respondent No. 7 and that no proper inquiry or opportunity of defence was afforded to him. He further submits that Respondent No. 7 also filed a criminal case (CC No. 839/2003) before the Judicial Magistrate, Madhepura, Bihar under Sections 498A, 494, 406, 420/34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The applicant claims that the Judicial Magistrate mechanically took cognizance of the complaint and the proceedings continued for nearly nine years. Meanwhile on his dismissal on 10.01.2004, the applicant filed WP(C) No. 1687/2004 before the Delhi High Court which was later dismissed for want of prosecution on 22.08.2006 due to

OA 852/2020
Ex CFN Kishor Kumar



non-appearance of counsel. The applicant admits that he did not pursue restoration of the said writ petition as he was simultaneously defending himself in the criminal case before the Sub Judicial Magistrate, Madhepura. Subsequently by judgment dated 17.07.2012 (Annexure A8), the learned Sub-Judicial Magistrate, Madhepura dismissed the complaint filed by Respondent No. 7 holding that she had failed to adduce any evidence or witnesses to establish the alleged marriage. Following his acquittal the applicant submitted several representations beginning from 07.01.2013 onwards (Annexures A9 to A12 collectively) to the DG EME Headquarters, New Delhi and other competent authorities seeking his reinstatement in service. He also pursued the matter through the Zilla Sainik Board, Bhagalpur and made representations to the Defence Minister Shri Sharad Yadav on 13.05.2013 and 19.06.2013 (Annexure A13).

4. The matter remained under correspondence between 2013 and 2014 with various authorities including EME Records and the Ministry of Defence (Annexures A15 to A17). He even addressed representations to the Hon'ble Prime Minister (Annexures A19 collectively). However when no action resulted, he approached this Tribunal by filing OA No. 2054/2019. The said OA was withdrawn on 28.11.2019 with liberty to approach the Delhi High Court for restoration of his earlier writ petition as the AFT held it not maintainable in view of the prior dismissal by the High

*OA 852/2020
Ex CFN Kishor Kumar*

Court. The Division Bench of the Delhi High Court by order dated 13.03.2020 (Annexure A21) held that since the writ petition had been dismissed in default and the Armed Forces Tribunal had by then been constituted under the AFT Act, 2007 the applicant's service related grievance could appropriately be raised before the Tribunal. Liberty was accordingly granted to approach this Tribunal for adjudication of the dispute concerning his dismissal. Pursuant thereto the applicant has filed the present application contending that he has not contracted any plural marriage, that the complaint of Respondent No. 7 was false and motivated and that his dismissal was based on mala fide and arbitrary action without due inquiry or opportunity. As the criminal case alleging plural marriage has been dismissed for want of evidence, he prays that the impugned order of dismissal be set aside and that he be reinstated in service with all consequential benefits as if the dismissal had never taken effect.

5. Learned counsel for the applicant while taking us through the documents and material on record vehemently argued that the impugned order of dismissal is vitiated by mala fides, bias, victimisation and harassment on the part of the respondents particularly Respondent No. 6. It is contended that the action of dismissal is arbitrary, motivated and unsustainable in law and therefore liable to be quashed.


6. Upon issuance of notice the official respondents (Respondents 1 to 5) entered appearance and filed a detailed counter affidavit. They admit that the applicant was enrolled in the Corps of EME on 27.12.1993 and at the time of enrolment he had declared his marital status as single. However based on a complaint subsequently received from Smt. Nirmala Devi it was revealed that the applicant had in fact been married to her on 25.06.1991 prior to his enrolment and that a son born of this wedlock had died within a year while a daughter Sudha Kumari was born on 15.03.1994. It is stated that Smt. Nirmala Devi made a representation in August 2002 to the CoAS and the CO, 15 Eng Sig Regt alleging that the applicant had neglected her and their daughter since May 2001 and that he had contracted a second marriage with one Smt. Shashi Prabha on 12.06.2000. She further alleged that during the subsistence of the first marriage the applicant had caused a Part II Order to be published by 508 Army Base Workshop, Allahabad reflecting his marriage with Smt. Shashi Prabha. The said Part II Order was published on 05.09.2000. On the basis of the said complaint the HQ Northern Command issued a show cause notice to the applicant on 18.10.2002 under Section 91(i) of the Army Act calling upon him to explain why a maintenance allowance should not be granted to his first wife. In response the applicant vide his reply dated 28.11.2002 admitted the claim and agreed to pay

OA 852/2020
Ex CFN Kishor Kumar



maintenance allowance to Smt. Nirmala Devi. Consequently the GOC-in-C, Northern Command by order dated 21.03.2003 directed deduction of 27.5% of the applicant's pay with effect from 16.10.2002 and the payments be made to Smt. Nirmala Devi (1st wife) towards maintenance of herself and her daughter in a ratio of 22% to wife and 5.5% to daughter. Simultaneously the complaint regarding plural marriage was also examined. After inquiry a show cause notice dated 22.03.2003 (produced by the applicant as Annexure A6) was issued to him alleging that he had contracted a plural marriage. The respondents state that in his signed reply dated 19.09.2002 (Annexure R1) written in his own handwriting in Hindi the applicant categorically admitted the allegation of plural marriage. After examining the entire matter in detail and obtaining approval of the competent authority the applicant was dismissed from service under Section 20 of the Army Act read with Rule 17 for contracting plural marriage in contravention of Para 333(C)(c) of the Regulations for the Army, 1987 (Revised Edition). The respondents further state that the applicant himself had submitted a declaration/nomination form at Depot Bn EME, Secunderabad acknowledging his marriage with Smt. Nirmala Devi on the basis of which a Part II order was published by EME Records (Part II Order No. 023/2003 dated 04.07.2003). Be that as it may they admit that the applicant thereafter represented to various authorities, approached the

OA 852/2020
Ex CFN Kishor Kumar



Delhi High Court and later this Tribunal. The respondents also point out that Smt. Nirmala Devi, the applicant's first wife (Respondent No. 7), had filed CC No. 839/2003 before the Civil Judicial Magistrate, Madhepura which was later transferred to the Court of the Senior Division Judicial Magistrate, Madhepura. It is contended that in light of the available records and the applicant's own admissions it stands conclusively established that the applicant had contracted a plural marriage and therefore no case is made out for interference with the impugned dismissal order.

7. Regarding the allegations of mala fides attributed to Respondent No. 6 on account of the applicant's having directly approached Army HQs through the DG EME seeking a compassionate posting, the respondents in their counter affidavit have denied the same. They submit that on 02.08.2002 the applicant directly addressed a personal application to the DG EME, IHQ of MoD (Army) seeking posting on compassionate grounds without routing it through the proper channel thereby violating the procedure prescribed under Para 557 of the Regulations for the Army, 1987 (Vol. II Revised). On receipt of the said application the Army HQs instructed HQs Northern Command to direct the unit to ensure that the applicant forwards his application through proper channel. The applicant was accordingly advised and subsequently re-submitted his request in

*OA 852/2020
Ex CFN Kishor Kumar*

accordance with procedure. It is further stated that the applicant was granted ten days of annual leave from 07.12.2002 to 16.12.2002 with a further extension of 19 days to visit his hometown for treatment of his ailing mother. However on completion of leave he failed to rejoin duty on 04.02.2003 and remained absent without authority until he voluntarily surrendered before EME Depot Battalion, Secunderabad on 23.03.2003. For the offence of unauthorised absence he was tried and punished under Section 39(b) of the Army Act with 28 days' rigorous imprisonment and 14 days' detention in military custody. The respondents emphatically deny the allegations of harassment or mala fide on the part of Respondent No. 6. They contend that the disciplinary action taken against the applicant was purely based on his own admissions and documentary evidence concerning plural marriage and not out of any personal vendetta. Therefore the plea of mala fide, bias or harassment is wholly unfounded and without merit.

8. Notices were also issued in the matter to both Respondent No. 6 and Respondent No. 7. Respondent No. 7 Smt. Nirmala Devi submitted her reply through the office. However the said reply is incomplete and in the said reply she mentions neglect by her husband towards herself and her child along with various other circumstances relating to the filing of CC No. 839/2003 before the Civil Judicial Magistrate, Madhepura. The written statement

*OA 852/2020
Ex CFN Kishor Kumar*

however bears no signature, unsupported by any affidavit and it is unclear how it came to be placed on record without due verification. The office note indicates that the written statement was received as an email attachment on 20.01.2021 at 5:10 p.m. The attachment contained a document purporting to be a written statement, unsigned but bearing an illegible thumb impression, purportedly to be of Nirmala Devi as stated in Hindi. The statement contains averments regarding her marriage to the applicant on 25.06.1991 at her parental home in Village Srinagar, District Madhepura, (Bihar), the birth of a son and a daughter, the unfortunate demise of the son in 1993, the applicant's subsequent marriage to Smt. Shashi Prabha, allegations of neglect and harassment by the applicant, the filing of a complaint case by her and other related assertions.

9. During the proceedings, the applicant was afforded an opportunity to serve notice on Respondent No. 7. The applicant thereafter filed an affidavit stating that the notice had been dispatched through Speed Post on 24.12.2020 and was delivered to Smt. Nirmala Devi's address at 16:42:42 hours on 01.01.2021. The records further indicate that subsequent to such service she sent the aforementioned written statement by email on 20.01.2021, which was received in the office the same day at 05:10 p.m and placed on record on 21.01.2021. The applicant's affidavit was accompanied by the postal receipt, proof of delivery

and a certificate issued by the Sub Post Master confirming service of notice. Subsequently after the written statement was placed on record on 21.01.2021, an affidavit was received by post in this office on 08.12.2021. The affidavit attested by a Notary Public in English was addressed to the "Hon'ble Chief Justice, Armed Forces Tribunal, New Delhi" and bore the subject "An Explanation about to the case no - OA 852/2020" (the present case). The said affidavit purportedly sworn by Smt. Nirmala Devi and signed in Hindi as "Nirmala Devi" contains the following statements:

Being a respondent of the case no - OA 852/2020 I have filed/ submitted the truth or facts of this case without any fear or any pressure of any one with the help of another affidavit even filing an affidavit before. In which I have stated the facts that I have never been married by any Kishor Kumar So that if you will gone through the details of this case certainly you will also found that there are no any solid evidence or eye witness of this case except the apologies letter of the said Kishor Kumar. And only to this causes I became failed to proof the case into the District Courts. No any village people became agreed to appear as witness. Because marriage was not held or commenced between the said Kishor Kumar and to me so there was no any photo graphs to produce in the favour of my claim. In fact in the year of 2002 dated November of 12th an officer named subedar Abhay Singh Thapa of 15 CESR, c/o- 56APO came up to near me with my brother Gajender Prasad Yadav and supplied me some documents (copies are attached with this) where as financed by my brother and advised to file a case in the District court, Madhepura (Bihar). Because the case was based on falsyness. So I have lost the same.

Thus this is my last submission with prayed as above stated I am illiterate so that I became failed at every where.

Thereafter certain documents relating to CC No. 839/2003 including a copy of the complaint and other connected papers were filed by the

OA 852/2020
Ex CFN Kishor Kumar



applicant. While the matter remained pending it was noted that upon issuance of a further notice to Smt. Nirmala Devi seeking clarification regarding the contradictory communications received from her another affidavit was filed which was received by post. This affidavit sworn by Smt. Nirmala Devi before a Notary states that she is the complainant in the said criminal case, that she had filed a false complaint against the applicant at the instance and advice of the Commanding Officer, that she has received a notice for personal appearance but is unable to attend the Court and that she has no objection to withdrawing all claims relating to the applicant Shri Kishore Kumar. This affidavit was received by post and placed on record accordingly.

10. These are the factual aspects of the matter as detailed hereinabove. Upon hearing the matter in detail and taking note of all the facts as recorded, this Tribunal by a detailed order dated 22.11.2023 directed that since Respondent No. 7 had not appeared personally before the Tribunal to resolve the issue in question notice be issued to the Court of the Magistrate, Madhepura (Bihar) to produce the entire original record of CC No. 839/2003. In compliance with the summons and notice issued by this Tribunal the Court of the Magistrate forwarded the complete original records of the said criminal case to this Tribunal.

11. We have carefully examined the entire facts and circumstances of the case and have considered the arguments advanced by the learned

counsel for the applicant as well as by the learned counsel for the respondents Shri Anil Gautam. We have also perused the original records of the criminal case which were submitted to this Tribunal by the Court of the Judicial Magistrate, Madhepura. The said records were sent by registered post and received in the office of this Tribunal pursuant to the order passed on 25.05.2022. They were forwarded by the learned Magistrate under his covering letter dated 04.04.2022 in compliance with the notice issued by the Principal Registrar of this Tribunal on 08.03.2022. The records were received in the office on 12.04.2022 and placed on record immediately upon receipt.

12. The applicant's case is one of false implication. It is his contention that Respondent No. 6 procured the complaint from Respondent No. 7 due to personal animosity arising out of the issue of compassionate posting, Respondent No. 6 in response to the notice has relied upon the counter affidavit filed by the official Respondents Nos. 1 to 5 and has denied the allegations through an email sent to this Tribunal. Respondent Nos. 1 to 5 in their counter affidavit while replying to Paragraphs 4(a) to 4(d) of the application have stated that an application for compassionate posting dated 21.08.2002 was received directly from the applicant. In accordance with Para 557 of the Regulations for the Army, HQs Northern Command was directed to forward the said application through proper channel. Thereafter they received the complaint and other related documents whereupon the matter was investigated. Initially maintenance was granted to

*OA 852/2020
Ex CFN Kishor Kumar*

Respondent No. 7 and subsequently based on the applicant's admission further action was taken. The applicant however denies all allegations and asserts that his so called admission to the show cause notice regarding dismissal and grant of maintenance was made under duress and threat from Respondent No. 6 who allegedly threatened him with death if he failed to comply. The applicant has annexed as Annexure A3 a copy of the complaint filed by Smt. Nirmala Devi which is a two page handwritten document in Hindi addressed to the CO, 15 Corps, 56 APO. In the complaint she narrates her marriage to the applicant on 25.06.1991 at Distt Madhepura, the birth of two children, the death of her son in 1992 and the birth of her daughter Sudha Kumari on 15.03.1994. She further alleges that the applicant failed to maintain her and their daughter, did not send money and subjected her to neglect and other grievances. Based on this complaint, the competent authority issued a show cause notice to the applicant regarding grant of maintenance. The applicant submitted his reply in his own handwriting vide Annexure A4 dated 28.11.2002 duly signed by him in English stating that he agreed to pay maintenance allowance from his salary to his wife. Accordingly by order dated 10.09.2003 (Annexure A5) maintenance was granted to the wife and child Sudha Kumari at the rate of ₹18,305.88 per month, being 27.5% of the applicant's salary. As per the applicable policy of the Indian Army the amount was to be distributed between the wife and child in the prescribed ratio. Subsequently a show cause notice for plural marriage (Annexure A6)

was issued to the applicant on 22.03.2003 for violation of Para 33 of the Regulations for the Army. In response, the applicant submitted a detailed reply in his own handwriting in Hindi on 05.07.2003 (Annexure A7) requesting a xerox copy of the allegations relating to plural marriage referring to the complaint filed before the Court at Madhepura and disputing the thumb impression and signature therein. However after giving this reply on 05.07.2003, he admitted to the allegations made in the show cause notice while denying the charge of plural marriage and produced a certified copy of the order passed by the Sub Judicial Magistrate, Madhepura. After examining the matter in detail and taking note of the admission made by the applicant regarding the grant of maintenance and the fact that the order dated 10.09.2003 granting maintenance to his wife and child has been complied with without any objection since 2003 the competent authority holding the charge of plural marriage to have been established proceeded to dismiss the applicant from service.

13. Therefore based on the facts that have come on record the issue that arises for consideration before this Tribunal is whether the allegation of plural marriage levelled against the applicant stands established or not.

14. A perusal of the original records in CC No. 839/2003 reveals and establishes that the criminal complaint against the applicant was presented before the competent Magistrate in November 2003 and on

19.11.2003 the complaint was perused by the Court and heard the complainant Smt. Nirmala Devi and her counsel. The learned Additional Chief Judicial Magistrate transferred the matter to the Court of Shri R.K. Singh, Judicial Magistrate First Class, Madhepura under Section 192 of the CrPC for inquiry and disposal. The complainant was directed to appear before the said Court on 15.12.2003 for recording her statement. The proceedings before the Court indicate that in the said complaint, the complainant had arrayed not only the applicant but also his parents and several other members of his family making a total of seven accused persons. They were charged with offences punishable under Sections 498A, 494, 406, 420 read with Section 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. Before registration of the complaint, the statements of three witnesses were recorded by the learned Magistrate viz. the complainant herself (Smt. Nirmala Devi), her daughter Sudha Kumari and her brother Rajendra Panwar @ Bharat. In her statement the daughter of the applicant deposed that her father had contracted a second marriage and was not taking care of them. The complainant's brother Rajendra Panwar @ Bharat also made allegations of harassment and demand of dowry. A close scrutiny of the records shows that after registration of the complaint in 2003, the proceedings continued for about eleven years. Finally on 07.12.2012 when the complaint was taken up for hearing the complainant was absent while Accused Nos. 1 to 5 were present. The Court noted that the complainant had remained absent for several dates and that although

the matter had been fixed for the complainant's evidence on 25.02.2011 no evidence had been adduced. Consequently the complainant's evidence was closed and the case was posted for arguments on merits. As there was no evidence available to substantiate the allegations in the complaint, the accused persons were discharged. However the proceedings that took place between the registration of the complaint in 2003 and its dismissal on 09.07.2012 spanning nearly twelve years reveal several important developments that are very much relevant for determination of the present matter. Owing to these factors the mere discharge of the applicant on the ground of non-availability of evidence in our considered view would not constitute an appropriate or conclusive basis for deciding the present issue.

15. Various proceedings were held before the Criminal Court in connection with the complaint. From the records it appears that during the year 2011 certain proposals were made for settlement of the case which involved the transfer of certain property viz. five khatas of land in favour of the daughter of Smt. Nirmala Devi who is also the daughter of the applicant. These aspects are duly recorded in the orders passed by the Court. While the complaint case was pending certain inquiries were conducted and bail including anticipatory bail was granted by the Sessions Judge, Madhepura in connection with the matter. In dealing with Anticipatory Bail Case No. 88/2006 concerning the arrest and grant of bail to the accused Amala Devi and Kamal Yadav in the said complaint case it is recorded that the applicants therein are husband

and wife and the father-in-law and mother-in-law of the complainant Smt. Nirmala Devi. From the records and documents available the order sheet of the Sessions Judge notes that the marriage of the complainant took place with the son of Kishore Kumar on 25.06.1991 according to Hindu customs, that a son was born in 1992 and that a daughter was born in 1994. It is further stated by the applicants seeking anticipatory bail that the husband of the complainant is serving in the Military. The allegations made in the complaint include acts of torture and cruelty by the complainant's husband and it is recorded that the complaint arose due to alleged non-payment of dowry. After considering all these factors anticipatory bail was granted to the parents of the applicant. Similar averments are also found in the proceedings relating to the grant of bail before the learned Magistrate.

16. Be that as it may it is seen that on 14.07.2011 proceedings were also held before the Court of the Sessions Judge, Madhepura. Even prior to that there appears to have been an agreement wherein the accused namely Kishore Kumar Yadav, the father of the applicant made a statement expressing his willingness to transfer certain land in favour of the complainant and her daughter. The proceedings show that the applicant's father and other relatives had agreed to transfer land to the complainant and her daughter for their maintenance. The records further indicate that before the dismissal of the complaint, documents were prepared and processed for transfer of property in the daughter's name. In the proceedings held on 29.07.2011 before the Sessions Judge,

*OA 852/2020
Ex CFN Kishor Kumar*

9

the complainant and her daughter appeared before the Court and made a statement that since the accused persons had contracted a second marriage she would be satisfied if some land were transferred in favour of her daughter. When such a statement was made Kishore Kumar (the father of the applicant) agreed to the same. He was accordingly directed to file details of the family's land. Various documents were produced before the Court and after perusal of the same along with the revenue report it was found that Kishore Kumar owned 14 khatas of land. Out of this 05 khatas were proposed to be transferred in the name of the complainant's daughter. Accordingly the Court directed that a sale deed or transfer deed in favour of the complainant's daughter for 05 khatas of land be executed and registered within 15 days and thereafter the matter be placed before the Court. It was also directed that the complainant and her daughter should appear before the Registrar's Office for execution of the deed. The records and affidavits on file indicate that the applicants family including his father and mother were willing to transfer the property and materials are available to show that certain steps were indeed taken for effecting such transfer. Be that as it may we need not go further into the matter. However upon examining the proceedings on record in the criminal case it is evident that a complaint was filed, various proceedings were held and the applicant's parents had agreed to transfer land in favour of Smt. Nirmala Devi's daughter on the ground that she is the daughter of their son. They also admitted during the proceedings before the Sessions Judge the fact of

2

marriage of their son with Nirmala Devi and birth of two children and further that their son is serving in the Military and that he has contracted a second marriage.

17. A cumulative reading and analysis of all documents on record indicate that the allegations against the applicant regarding plural marriage stand established from the material available. Merely because the criminal case was dismissed due to non-appearance of the complainant and lack of evidence the applicant cannot be granted any relief. The reasons for the same in our considered view are as follows:

(i) When Smt. Nirmala Devi made a complaint alleging that the applicant was not maintaining her and their daughter and when a show cause notice was issued to the applicant, he admitted his liability to pay maintenance.

(ii) When orders under Section 91 of the Army Act were passed directing payment of maintenance the applicant did not challenge or ventilate any grievance against the said order. Instead he complied with it and paid maintenance to his wife and child, which was regularly deducted from his salary for months together.

(iii) When the show cause notice relating to plural marriage was issued though the applicant initially sought certain documents, but he ultimately did not contest the same.

(iv) After his dismissal from service in 2004 the applicant did not take any steps to challenge the dismissal nor did he make any complaint regarding the grant of maintenance, etc. He remained silent throughout this period and even when a Part II Order was issued on 04.07.2002 by the EME Records declaring Smt. Nirmala Devi as his wife he raised no objection.

(v) Ample evidence is available on record not only in the form of the applicant's own admissions but also from the proceedings before the criminal court where his father, mother and the applicant himself had appeared. In addition there are statements on oath in the criminal proceedings by Smt. Nirmala Devi, her daughter and her brother regarding the marriage of Smt. Nirmala Devi with the applicant and its admission by parents of the applicant before the Session Judge

18. Taking note of all these circumstances we find that the vague allegations made by the applicant that action was taken against him on the basis of a false and fabricated complaint allegedly initiated at the instance of Respondent No. 6 merely because he did not seek compassionate posting through proper channel are wholly untenable. The overwhelming evidence on record and the consistent conduct of the applicant throughout clearly indicate that he was married to Smt. Nirmala Devi, that a child was born from the said wedlock, that the child is still alive and that the applicant had paid maintenance to them during his service in compliance with an order passed by the competent authority under Section 91 of the Army Act.

19. Accordingly in the facts and circumstances of the case and based on the foregoing analysis we are not inclined to interfere in the matter. The disciplinary action taken against the applicant for plural marriage is supported by ample evidence including the admissions of the applicant and his father regarding his marriage with Smt. Nirmala Devi. We therefore find no reason to make any indulgence in the matter.

20. The OA is accordingly dismissed.

OA 852/2020
Ex CFN Kishor Kumar



21. Pronounced in open Court on this the 12th day of November,
2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/Jyoti/

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

B.

OA 852/2020

Ex CFN Kishor Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Anand K. Chauhan, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr. CGSC for R 1-5,
Mr. Pradeep Arora, Advocate for R- 6
& None for R-7


CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
12.11.2025

OA 852/2020

Judgement pronounced today in open Court in the aforesaid case. The records in Criminal Case No.839/2003, "Nirmala Devi Vs. Kamal Yadav & Ors." were summoned from the Court of Judicial Magistrate, Madhepura, Bihar. The documents received on summoned from the Court of Judicial Magistrate, Madhepura, Bihar, to be returned to the office of the concerned Court by Registry forthwith.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/AK/AS/