

**(2018) 06 MP CK 0082**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Writ Petition No.1723 of 2007

Hem Singh S/O Harilal

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

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**Date of Decision:** June 21, 2018

**Acts Referred:**

- Central Civil Services (Conduct) Rules, 1964 - Rule 21
- Central Reserve Police Force Rules, 1955 - Rule 11(1), 15
- Central Civil Services (Classification, Control And Appeal) Rules, 1965 - Rule 14
- M.P. Civil Services (Conduct) Rules, 1965 - Rule 22

**Hon'ble Judges:** S. C. SHARMA, J

**Bench:** Single Bench

**Advocate:** Manoj Manav, Deepak Rawal

**Final Decision:** Allowed

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### **Judgement**

The petitioner before this Court has filed the present petition being aggrieved by the order dated 22.09.2005 (Annexure-P/1) passed by the

respondents dismissing the petitioner from the services and order dated 07.01.2006 passed by respondent No.2 dismissing the appeal of the petitioner.

The facts of the case reveal that the petitioner was appointed in the year 1997 on the post of Constable after proving his worth in the process of

selection under the Central Reserve Police Force and while he was serving as Constable, a charge-sheet was issued on 30.10.2004 alleging

misconduct, as defined under Rule 21 of Central Civil Services (Conduct) Rules, 1964 r/w Rule 15 of CRPF Rules, 1955. The petitioner did submit a

reply to the charge-sheet.

The allegation, as reflected from the charge-sheet reflects that the petitioner has entered into a second marriage with Smt. Sanju Khatri D/o Late

Sooraj Bahadur on 18.07.2004 while his first wife Smt. Kamlesh Devi was alive. The charge-sheet was issued under Rule 11 (1) of the CRPF Act, 1949.

The petitioner in his reply has categorically stated that his marriage with Smt. Kamlesh Devi took place as per the customs prevailing in their caste

and even after sixteen years of marriage, as no child was born, Smt. Kamlesh Devi consented for the second marriage and she gave an affidavit also

in that behalf.

It has also been stated that Smt. Kamlesh Devi has also moved an application before the employer for grant of permission to the present petitioner in

respect of the second marriage. The application was preferred on 26.05.2004 and was rejected by the employer i.e. CRPF on 30.12.2005.

The petitioner's grievance is that in the departmental inquiry, the charge against the petitioner has been established and his services have been put

to an end by inflicting a punishment of dismissal and punishment of dismissal is disproportionately shocking to the guilt of the Government Servant.

On the other hand, learned Additional Solicitor General has argued before this Court that no procedural defect has been committed by the Inquiry

Officer while conducting the inquiry. The charge-sheet was issued for committing misconduct i.e. contracting of the second marriage during the life

time of the first wife, and therefore, as it is case of proven misconduct, the punishment has rightly been awarded in the matter and no case for

interference is made out in the matter. He has also argued that as per Rule 21 of Central Civil Services (Conduct) Rules, 1964 and Rule 15 of the

CRPF Rules, 1955, the petitioner has committed a grave misconduct punishable under Rule 14 of CCS (CCA) Rules, 1965 and Rule 11 (1) of the

CRPF Act, 1949. Hence, no case for interference is made out in the matter and the present writ petition deserves to be dismissed.

This Court has carefully gone through the writ petition, the reply filed by the respondents as well as the documents relating to the departmental inquiry.

The basic question before this Court is whether a Constable under the Central Reserve Police Force can perform a second marriage and if he does

so, which is in violation of Rule 21 of the Central Civil Services (Conduct) Rules, what punishment can be awarded to him if consent of the

Government/permission of the Government is not obtained.

In the present case, undisputedly, the consent of the first wife is in existence and there is no quarrel about it. The wife did submit an application before

the employer for grant of permission before the punishment was awarded, however, the application for grant of permission by the employer has been

rejected on 30.12.2005, meaning thereby, after dismissal of the petitioner from service. The misconduct has been proved during the departmental

inquiry.

A similar problem arose in respect of the Constable working under Special Armed Force and again there was no permission obtained from the State

Government before getting married. The Division Bench of this Court in the case of Gop Chand Rai v/s State of M.P. 2004 (2) M.P.H.T. 21 (DB) in

similar circumstances in paragraphs 13 to 37 has held as under:-

“13. Let us briefly deal with the relevant provision of the M.P. Civil Services (Conduct) Rules, 1965.

The relevant Rule is Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965. The Rule deals with Bigamous marriages which reads as under:--

Bigamous marriages.-- (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the

Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

22-A. General Concept of misconduct.-- Without prejudice to the generality of the concept of misconduct any act or omission in breach of directions

or prohibition enacted in these rules shall amount to misconduct punishable under the M.P. Civil Services (Classification, Control and Appeal) Rules,

1966.

This Rule is not under challenge before us. The Rule clearly spells out that no Government servant who has a wife living shall contract a second

marriage without obtaining permission of the Government, notwithstanding that the second marriage is permissible under the personal law applicable to

him.

14. Therefore, if the rule is to be read strictly even if a person has a divorce by custom, it is necessary to get the State Government permission before entering into a second marriage.

15. It was submitted by the learned Senior Counsel for the appellant that the rigor of this rule does not apply to a person whose first marriage has been dissolved in accordance with customs and, therefore, the solemnization of second marriage does not act as a breach of Rule 22-A.

16. We do not think that this rule can be interpreted in that way. Our understanding of the rule is clear. There is a prohibition for a person who wants to contract a second marriage although the second marriage is permissible under personal law unless before contracting the second marriage permission is first obtained from the Government.

17. In other words, even if a person, who is in Government service, has a valid divorce by custom, he can not marry again without obtaining the permission of the Government.

18. As stated earlier, we have to remember that this rule is not under challenge before us.

19. Therefore, we have to necessarily come to the conclusion that there is a violation of Rule 22 only in so far as the appellant has not obtained prior permission from the State Government for his second marriage.

20. What happens next is a human problem. Whether a person should be meted out with such a severe punishment for not obtaining prior permission for the second marriage will have to be determined by this Court taking into account the consequences that will be visited on both the first wife as well as the second wife and the children.

21. This certainly is a human problem. It involves the future of three innocent children born to the first wife.

22. The first wife curiously appeared in the Court and pleaded for clemency on behalf of her husband, the Constable. She stated that if her husband loses his job, the children will be in the streets. The first wife also stated that she has also remarried again after the so called divorce. All that the first

wife wanted was to make sure that her first husband pays maintenance for the upkeep of the children. She has stated that neither she nor her so called second husband have any means to look after the children born to the appellant.

23. The first wife had categorically stated that she never complained about the second marriage but only wanted the payment of maintenance for the children to continue.

24. In the meanwhile, the Constable filed an affidavit before the Court in the presence of the first wife. The Constable undertook before this Court to maintain the three children born out of the first wife by paying a sum of Rs. 2,000/- per month to the first wife for the maintenance of the three children. It is relevant to extract the affidavit filed by the appellant/Constable before this Court. The Affidavit reads as follows:--

I, Gop Chand Rai, s/o Shri Shyamlal Rai, 39 years, r/o Village Hardua, Tehsil & District Katni, do hereby solemnly affirm and state on oath as under:-

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(1) I am appellant in the aforesaid case.

(2) I undertake through this Affidavit that I will maintain three children born from my first wife Reena Rai and I further undertake that I will be regularly paying Rs. 2,000/- to Smt. Reena Rai for maintenance of my three children born from Reena Rai.

(3) I further undertake that in case of any default on my part in paying the aforesaid amount the State Government or the disciplinary authority will be at liberty to take disciplinary action against him.

25. As far as the misconduct is concerned, this is an open and shut case. However, the folly committed by the appellant/Constable was that he did not get prior permission from the State Government before the second marriage.

26. For all these reasons, it can be safely said that the punishment of dismissal from service will leave the children shattered and in a state of poverty.

We have no doubt that the first wife will look after the children and give them proper education and sustenance in the village although she has married for the second time after the so called divorce.

27. The first wife was present in Court more or less pleading on behalf of her husband that he should not lose his job. It was borne out from the record

that the complaint given by her was only with regard to maintenance but then the law took its turn, which ended in the dismissal of the

appellant/Constable. We feel that both the appellant and his first wife are sincere that the children must have a future and they must be educated and

well fed. All this requires money. Our paramount consideration was the welfare of the three minor children born to the appellant and the first wife.

Throwing the appellant into the streets without employment would tantamount to throwing the children out of Court without any sustenance.

28. In that view of the matter, we do not think that the first wife is shielding her husband, the Constable, from punishment. She is genuinely interested

in caring for the children which is a paramount consideration to her.

29. Does this technical offence call for a punishment of dismissal from service and at what cost ? The divorce was by common usage and may be or

may not be acceptable in law.

30. But, the fact of the matter is that the Constable married again and the first wife also married once again and the Constable committed an error in

not obtaining permission from the State Government when he got remarried.

31. We feel that this technical error, which undoubtedly is a misconduct, can not lead to the consequences of dismissal from service.

32. In normal circumstances, if we found that the punishment is shockingly disproportionate, we would send it back to the disciplinary authority to deal

with the matter in accordance with our directions, but in the facts and circumstances of the case and taking into account the paramount interests of

the children, we propose on a broad consensus to deal with the matter ourselves. It is in rare circumstances the Court may substitute a lesser

punishment if the punishment imposed by the disciplinary authority is shockingly disproportionate.

33. We have the pronouncements of the Supreme Court which enable us to take this course of action.

34. In *B.C. Chaturvedi v. Union of India and Anr.* [(1995) 6SCC 749] the Supreme Court did pronounce that in extra-ordinary circumstances, it is

possible for the Court to substitute a lesser punishment without sending it back to the disciplinary authority. The Supreme Court in Director General

RPF and Ors. v. Ch. Sai Babu [(2003) 4 SCC 331] has pronounced that normally, the punishment imposed by a disciplinary authority should not be

disturbed by the High Court or a Tribunal except in appropriate cases, that too only after reaching a conclusion that the punishment imposed is grossly

or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed

earlier, the nature of duties assigned, having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the

department/establishment in which the delinquent person concerned works. The Supreme Court took the same view in Chairman & Managing

Director, United Commercial Bank and Ors. v. P.C. Kakkar [(2003) 3 SCC 364].

35. Following the pronouncements of the Supreme Court in the facts and circumstances of the case, we substitute the punishment of dismissal from

service to that of withholding of one increment with cumulative effect. The Constable/appellant shall not be entitled to back wages. However, he shall

be entitled to continuity of service.

37. It is made clear by consent of the appellant/Constable that the maintenance amount of Rs. 2,000/- per month shall be paid to the first wife

regularly and without fail on or before 10th of each calendar month. The appellant also undertakes before this Court that if the amount of Rs. 2,000/-

per month is not paid, the first wife is at liberty to take such steps in accordance with law and may report the matter to the superior authorities and the

superior authorities shall, out of the salary of the Constable, pay the maintenance amount by deducting it from the salary of the Constable/appellant

directly to the first wife. This, in our view, would meet the ends of justice. It will not only save the appellant from the rigor of dismissal but also his

reinstatement will give succour to the first wife and his three minor children. Time granted for reinstatement as indicated by this Court shall be one

month from the date of receipt of this order. This order is made without pre-judice to any civil rights that may be agitated in a court of law by the

partiesâ€

The Division Bench keeping in view the judgment delivered in the case of B.C. Chaturvedi v/s Union of India and Another (1995) 6 SCC 749 has

substituted the punishment keeping in view the extraordinary circumstances and a punishment of withholding of one increment with cumulative effect

has been awarded.

The only difference in the present case is that in place of Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965, Rule 21 of the Central Civil

Services (Conduct) Rules, 1965 is applicable and the same reads as under:-

“21. Restriction regarding marriage-

(1) No Government servant shall enter into, or contract, 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 married or marries a person other than of India Nationality shall forthwith intimate the fact to the Government.”

In light of the aforesaid and keeping in view Rule 21 of the Central Civil Services (Conduct) Rules, 1964, this Court is of the opinion that the

punishment awarded to the petitioner is certainly disproportionate and deserves to be quashed and is accordingly quashed and the punishment of

dismissal be substituted to that of withholding of one increment with cumulative effect.

Not only this, in another case decided by Manipur High Court in the case of Union of India & three others v/s Mohammad Jakir Hussain 2015 SCC

Online Mani 67, a similar view has been taken in respect of Constable of CRPF and the punishment of dismissal has been set aside.

Not only this, in the case of Rameshwar Kumbhakar v/s State of M.P. & Another passed in W.P. No.3816/2006 decided on 24.03.2015, again in case



of second marriage during the life time of the first wife, a similar view has been taken by this Court and the punishment of dismissal from the services

has been substituted to that of withholding of one increment with cumulative effect.

Resultantly, the present writ petition also stands allowed. The punishment of dismissal is substituted to that of withholding of one increment with

cumulative effect. The Constable/petitioner will not be entitled for backwages, however, he will be entitled for continuity in the services and for all

other consequential benefits. The respondents are also directed to reinstate the petitioner within thirty days from the date of receipt of certified copy

of this order in case he has not attained the age of superannuation.

Certified copy as per rules.