

OA 1198 OF 2016

J U D G E M E N T

The instant application has been filed praying for following relief:-

a) An order do issue thereby setting aside/rescind/cancel/quash/withdraw/revoke the entire departmental proceeding being proceeding No. 14/13 dated 27.06.2013, findings of the enquiry officer vide Memo No. 04/Dy. SP (AP), Nadia dated 03.02.2013, Second Show Cause Notice, final order dated 26.07.2016 issued by the Superintendent of Police, Nadia and the appellate authorities order vide Memo No. 1393 (2)/CSI/RHQ dated 24.11.2016 affirming the final order of dismissal passed by the Superintendent of Police, Nadia and after setting aside reinstate your applicant in service within a stipulated time period.

b) An order do issue directing the respondent authorities to give all consequential service benefits after setting aside/rescind/cancel/quash the entire departmental proceeding being proceeding No. 14/13 dated 27.06.2013 issued by the Superintendent of Police, Nadia and the appellate authorities order vide Memo No. 1393 (2)/CSI/RHQ dated 24.11.2016.

c) An order do issue directing the respondent authorities to withdraw/cancel/rescind/quash/set aside the final order of punishment of dismissal which was later affirmed by the appellate authority's order as the same is shockingly disproportionate to the alleged charge.

d) A further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionably justice can be done.

e) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of

the applicant and in the ends of justice.

2. The case of the applicant is as follows :-

(i) The applicant was implicated under one disciplinary proceeding being no. 14/13 dated 27.06.2013 (Annexure –A collectively) on the allegation that he conducted second time registered marriage on 25.11.2010 with another lady namely Mantesi Kabasi suppressing fact of his first marriage with Smt. Mira Halder as well as without the consent of his first wife and/or obtaining permission from his appointing authority. Therefore, he has violated the provision of the Rule 20 of the West Bengal Government Servants Conduct Rules, 1959.

(ii) In response to the said charge sheet, the applicant submitted his written statement of defence on 01.07.2013.

(iii) Thereafter Dy. Superintendent of Police (Armed Police), Nadia being Enquiring Officer conducted the enquiry and submitted his enquiry report dated 04.02.2016 holding guilty of charges. (Annexure-A).

iv. Thereafter, the applicant was served with a second show cause notice proposing the punishment of dismissal from service against which he submitted his reply on 21.03.2016 (Annexure-B). Subsequently being aggrieved with, the applicant had filed one OA-426 of 2016, which was disposed of on 30.06.2016 with a direction to the S.P. Nadia to conclude the proceedings as early as possible by way of passing a final order.

v. In pursuance to the said order, S.P. Nadia imposed punishment of dismissal from service vide his impugned final order dated 26.07.2016. Against which the applicant has preferred an appeal before the D.I.G. of Police, Murshidabad Range, Nadia. However, the appellate authority affirmed the dismissal order passed by the disciplinary authority vide his order dated 29.11.2016 (Annexure-D). Being aggrieved with the applicant has preferred this instant application.

3. As per the applicant the enquiry report is perverted, contrary and vague and is not based on any evidence. It has been further submitted that the order of dismissal is also disproportionate to the charges, which is not connected with the service conditions of the applicant but is related to private dispute. Therefore, he has prayed for quashing of the dismissal order passed by the Disciplinary Authority as well as Appellate Authority.

4. The respondents have filed their written statement wherein they have submitted that the applicant was granted proper opportunity to defend himself and there is no violation of natural justice and the final order and the appellate order were passed even after issuance of second show cause notice. Therefore, punishment was rightly imposed, as he was found guilty of misconduct as per the service rules. It has been further submitted by the respondents that the Tribunal has little scope to interfere with the departmental proceeding as there is no violation of natural justice etc. Therefore, they have preferred for dismissal of the instant application.

5. The applicant has filed his rejoinder wherein he has reiterated submission as has already made in the application and also denied the contention of the respondents.

Heard the parties and perused the records. It is noted that the applicant was granted proper opportunity to present his case. The enquiry report clearly shows the corroboration of the documents i.e. specially two certificates of marriage conducted with two ladies as well as report of S.D.P.O. statement of his first wife, statement of landlord where he resided with the second wife and one child. Therefore, the allegation of the applicant that the findings of the Enquiring Officer is not based on any document, is not acceptable.

However, during the course of hearing, the counsel for the applicant has also vehemently submitted that the penalty of dismissal imposed by the authority is disproportionate to the charges made against him as he was charged for bigamy, which is a private dispute and have no relations with the service conditions or any heinous crime like murder or defalcation of money etc. Therefore, punishment imposed upon him should be revisited by the authority.

In support of his contention he has referred two orders passed by this Tribunal, which was subsequently affirmed by the Hon'ble High Court, which are as follows :-

a) Order dated 29.04.2016 passed in OA-1459 of 2013 Ashoke Kumar Das Vs. State of West Bengal & Others.

Affirmed vide Order dated 07.12.2016 passed in W.P.S.T. No. 186 of 2016.

b) Order dated 02.07.2009 passed in OA-1253 of 2007 Dharmadas Karmakar Vs. State of West Bengal & Ors.

Affirmed vide Order dated 28.02.2013 passed in W.P.S.T. No. 601 of 2009.

In our opinion the aforementioned judgments are squarely applicable in this case. After perusing the aforementioned judgements as well as provisions of rules, it is observed that the charges against the applicant constitute misconduct as per the service rules, but it relates to private dispute thus neither having any direct adverse effect on the other service conditions of the applicant, nor it relates to any heinous crime like murder, rape, defalcation of money, bribe etc. Further under Service Rules, there are another provisions of major penalty of punishment other than dismissal. Therefore, in our considered opinion the punishment of dismissal may be revisited by the authority otherwise his family may suffer for no fault of them.

In view of the above, we set aside and quash the impugned Disciplinary Authority's Order No. 14/13 dated 27.06.2013 and Appellate Authorities Order vide Memo No. 1393 (2)/CSI/RHQ dated 24.11.2016 and remand back this matter to the Disciplinary Authority to revisit the quantum of punishment without interfering the findings of guilt of the applicant and to impose any punishment other than dismissal within a period of 8 (eight) weeks from the date of communication of this order. However, we make it clear that in case of reinstatement, the applicant should not get any back wages between the period of dismissal and period of reinstatement but the said period would be taken up for consideration of retiral benefits only.

Accordingly, OA is disposed of with the above observation with no order as to costs.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER (J)