

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) No.487/2024

MUSHTAQ AHMAD KHAN

...PETITIONER(S)

Through: Mr. Ahmad Javaid, Advocate.

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

Through: Mr. T. M. Shamsi, DSGI, with
Ms. Shagufta & Mr. Faizan, Advocates.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)

19.05.2025

1. The petitioner has filed the present writ petition challenging order dated 03.10.2023 issued by respondent No.2, whereby penalty of compulsory retirement with no effect on his pension/gratuity has been imposed upon him.

2. As per case of the petitioner, he was working in paramilitary force and later on superannuated in the year 1999. He got re-engaged with the respondents in Ex-Serviceman category in the year 2003 and was posted at International Airport, Srinagar. It has been pleaded that the petitioner had entered into wedlock with one lady, namely, Sarwar Jan that ended in divorce in terms of divorce deed dated 20.08.2017. It has been further submitted that later

on the petitioner entered into a fresh wedlock with another lady, namely, Sajida Alia Tabasum as per Muslim law. However, due to ill health of his second wife, she left the petitioner and he had to divorce her as well.

3. It has been submitted that one of the neighbours of the petitioner lodged a false and frivolous FIR against him before Police Station, Kupwara, and he was arrested in the said case. It has been further submitted that pursuant to registration of said FIR and his arrest, the petitioner was suspended, whereafter he was compulsorily retired from service in terms of impugned order dated 03.10.2023, though the actual date of his retirement is 30.11.2025.

4. According to the petitioner, he approached the respondents for reinstating him but his request was not considered. It has been claimed that the petitioner has not been given any opportunity of hearing by the respondents nor any enquiry was conducted against him. Thus, the respondents, without adopting due process of law, have compulsorily retired the petitioner.

5. The writ petition has been contested by the respondents by filing their reply, in which they have submitted that the petitioner was re-engaged in the Bureau of Civil Aviation Security under Ex-serviceman category on 07.02.2003 to the post of Dispatch Rider. A complaint came

to be filed against the petitioner by one Ms. Sajida Alia Tabassum claiming to be the wife of the petitioner, in which she alleged that the petitioner has been physically and mentally harassing her and that he has kept her in dark with regard to his first marriage with Ms. Sarwar Jan.

6. In the above context, an explanation was sought by the respondents from the petitioner in terms of notice dated 26.08.2021. In response thereto, the petitioner filed his reply dated 08.09.2021, in which he admitted that he has entered into a wedlock with Ms. Sajida Alia Tabasum on 17.07.2016. It has been submitted that the petitioner had not sought any permission for second marriage with Sajida Alia Tabasum from the competent authority, though his marriage with Ms. Sarwar Jan was subsisting. Thus, according to the respondents, the petitioner has violated Rule 21 of the Central Civil Services (Conduct) Rules, 1964 (for short "Conduct Rules").

7. It has been submitted that another show cause notice dated 01.10.2021 was sent to the petitioner, to which he responded vide his reply dated 08.10.2021. In his reply, the petitioner stated that though he had entered into a wedlock with Sajida Alia Tabasum in 2016 but the said marriage has been dissolved in terms of a deed of divorce with mutual consent. It was also submitted by the petitioner that because

he is a Muslim, as such, there is no need for him to inform his office while marrying second time.

8. In the light of the reply of the petitioner, the Disciplinary Authority issued memorandum of charges dated 22.12.2021 against the petitioner in terms of Rule 14 of the Central Civil Services (Classification, Control and Appeal), Rules, 1965 (for short "the Rules of 1965"). In response to the said memorandum of charges, the petitioner submitted his reply dated 10/11.01.2022, in which he admitted having contracted a second marriage after his first marriage with Ms. Sarwar Jan was dissolved. Vide OM dated 23.02.2022, the petitioner was asked to furnish proof of dissolution of his first marriage and in response thereto, he, vide his reply dated 28.03.2022, submitted that his first marriage with Ms. Sarwar Jan had not been dissolved, hence there was no question of furnishing intimation to the competent authority. According to the respondents, even if it was open to the petitioner to contract second marriage during the subsistence of his first marriage, still then he could not have done so without permission of the competent authority and, as such, he has violated the Conduct Rules.

9. It has been submitted by the respondents that a thorough enquiry was initiated and the Enquiry Officer vide his report dated 20.03.2022 concluded that the petitioner

was having two wives at the same time and that he has not taken any permission from the competent authority for contracting second marriage nor has he divorced his first wife before contracting the second marriage. It has been further contended by the respondents that the enquiry report was forwarded to the petitioner vide communication dated 09.06.2023 and he was asked to submit his representation against the same. In his representation dated 31.07.2023, the petitioner submitted that he had some issues with his second wife, due to which she had filed a complaint against him and that the issue has now been resolved, whereafter she has withdrawn her complaint and that he was not aware about the rule position with regard to information about second marriage.

10. In the light of the report of the Enquiry Officer and after considering the response of the petitioner, the competent authority in terms of the impugned order dated 03.10.2023, imposed the penalty of compulsory retirement with no effect on his pension and gratuity, upon the petitioner.

11. Regarding pensionary benefits, it has been submitted that FIR No.47/2023 stands registered against the petitioner in Police Station, Kupwara, and, as such, the petitioner is eligible only for provisional pension in terms of Rule 8 of the

CCS (Pension) Rules 2021, until finalization of the criminal case.

12. I have heard learned counsel for the parties and perused record of the case.

13. The charge levelled against the petitioner, which led to imposition of punishment of compulsory retirement upon him, is that he has contracted second marriage during the subsistence of his first marriage without divorcing his first wife and without informing the competent authority. In this regard, the respondents have relied upon Rule 21 of the Conduct Rules, which provides that a Government servant cannot enter into, or contract, a marriage with a person having a spouse living and a Government servant having spouse living shall not enter into, or contract a marriage with any person. Proviso to Rule 21 (supra) vests power with the Government to permit an employee to enter into contract of second marriage during the subsistence of first marriage if such marriage is permissible under the personal law applicable to such Government servant and there are other grounds for doing so, meaning thereby that the permission from the competent authority for contracting a second marriage during the subsistence of first marriage is mandatory and contracting second marriage during the

subsistence of first marriage without such permission constitutes an infraction of the Conduct Rules.

14. The contention of the petitioner is that no enquiry was conducted by the respondents before issuing the impugned order and that he was not even heard by them. Thus, according to the petitioner, the respondents have, without holding an enquiry, imposed major penalty of compulsory retirement upon him, which is impermissible in law.

15. Rule 14 of the Rules of 1965 provides the procedure for imposing major penalties. In terms of the said Rule, the articles of charge have to be framed against the delinquent employee and the same have to be served upon the delinquent employee along with a list of documents and witnesses by which each article or charge is proposed to be sustained. The delinquent employee is required to submit his written statement of defence and on receipt of the written statement of defence, the Disciplinary Authority can either itself inquire into the articles of charge if the same are not admitted or it can appoint an Inquiry Officer for the purpose. It further provides that during the inquiry proceedings, the Presenting Officer has to produce evidence before the Inquiry Officer to prove the articles of charge and the witnesses examined by the Presenting Officer are to be subjected to cross-examination by the delinquent employee. After the

closure of evidence by the Presenting Officer, the delinquent employee has a right to state his defence and to examine the witnesses on his behalf, if he desires to do so. It is only thereafter that the Inquiry Officer has to render his report.

16. In the instant case, the documents placed on record by the respondents along with their reply indicate that the memorandum of charges has been served upon the petitioner. Prior to the framing of memorandum of charges, a show cause notice was issued to the petitioner on 26th August, 2021. In response thereto, the petitioner vide his communication dated 08.09.2021, has admitted that he has entered into a wedlock with Sajida Alia Tabassum in the year 2016, whereafter he divorced her on 21st September, 2020. In para (5) of his response, the petitioner submitted that after divorcing Ms. Sajida Alia Tabassum, he is residing along with his family happily. Again, in response to show cause notice dated 1st October, 2021, the petitioner, in his reply, reiterated that he had entered into a wedlock with Sajida Alia Tabassum in the year 2016, whereafter he divorced her. In both these responses, the petitioner has remained silent about the fate of his first marriage. It seems that it is because of this reason the respondents have framed memorandum of charges against the petitioner, as he did not

explicitly admit the subsistence of his first marriage in his responses to two show cause notices issued to him.

17. In response to the memorandum of charges, the petitioner has, vide his communication dated 11.01.2022, conveyed that his first marriage had failed, so he married a second time, which is permissible in Shariat but his second marriage also failed. He has further submitted that he has entered into a compromise with his second wife and prayed that the matter may be closed against him.

18. The petitioner filed another reply to the memorandum of charges vide his communication dated 10.01.2022, in which he claimed that he has contracted second marriage and that his first marriage has already been dissolved and in this regard, information has already been furnished to the authorities.

19. The respondents, vide communication dated 23rd February, 2022, after considering reply of the petitioner to the memorandum of charges, sought proof from him regarding dissolution of his first marriage with Ms. Sarwar Jan and proof of intimation of dissolution of first marriage submitted to the competent authority. In response thereto, the petitioner addressed communication dated 28th March, 2022, to the respondents, in which he stated that he has not dissolved his marriage with Ms. Sarwar Jan and, as such,

there was no question of furnishing an intimation to the respondents in this regard.

20. It seems that on the basis of the aforesaid admission of the petitioner that he had not divorced his first wife and that he had entered into a wedlock with Sajida Alia Tabassum, the Enquiry Officer concluded that charge against the petitioner stands established and, accordingly, vide communication dated 9th June, 2023, a copy of the enquiry report was forwarded to the petitioner.

21. It appears that the petitioner vide his communication dated 9th June, 2023, responded to the enquiry report, in which he admitted that he has married twice. He further submitted that he had some dispute with his second wife because of which she had filed a complaint against him and now he has settled the matter with his second wife who has agreed to withdraw the complaint against him.

22. From the aforesaid sequence of events, it is clear that the petitioner has admitted the charge of contracting a second marriage during the subsistence of his first marriage without informing the competent authority. In his response to initial show cause notice, the petitioner had remained silent about the fate of his first marriage. Although in his response to memorandum of charges, he had taken a plea that he had divorced his first wife, yet when he was asked to

produce proof in this regard, he responded by writing that because he had not divorced his first wife, there was no question of producing any proof or furnishing any information to his employer in this regard.

23. In the face of aforesaid unequivocal admission on the part of the petitioner, there was no need for the Enquiry Officer to call for evidence/witnesses from the Presenting Officer and to afford an opportunity to the petitioner to cross-examine the witnesses. Sub-rule (10) of Rule 14 of the Rules of 1965, provides that the inquiring authority has to return a finding of guilt in respect of those articles of charge to which the employee pleads guilty. Once the petitioner, in the instant case, has admitted that he was having a subsisting marriage when he married second time and that he did not furnish any intimation to his employer, there is hardly any need to go for any further enquiry into the articles of charge framed against him.

24. In the face of aforesaid circumstances, giving an opportunity to the petitioner to produce evidence or to examine/cross-examine the witnesses would have been an empty formality. Even when the petitioner was asked to file his representation against the enquiry report, he has not challenged the finding of the Enquiry Officer. However, he has taken a stand that now he has entered into a

compromise with the second wife who had filed the complaint against him, as such, the case against him be closed.

25. In the face of unequivocal admission of the petitioner to the charge levelled against him, the finding rendered by the Enquiry Officer, on the basis of which the impugned order has been passed, cannot be interfered with.

26. So far as the contention of the petitioner regarding non-payment of pension is concerned, in this regard, the respondents have clearly stated due to pendency of criminal proceedings arising out of FIR No.47/2023 registered with Police Station, Kupwara, provisional pension has been sanctioned in favour of the petitioner. Once criminal proceedings are going on against the petitioner, he cannot seek release of full pension at this stage. The respondents have, therefore, rightly resorted to sub-rule (3) of Rule 8 of CCS (Pension) Rules, 2021 by sanctioning provisional pension in favour of the petitioner.

27. For the foregoing reasons, I do not find any merit in this writ petition. The same is dismissed accordingly.

(Sanjay Dhar)
Judge

Srinagar
19.05.2025
"Bhat Altaf-Secretary"

Whether the order is reportable: Yes/No