



2026:DHC:66-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19.11.2025
Pronounced on: 07.01.2026

+ W.P.(C) 1414/2019

BIRENDRA SINGH KUNWARPetitioner

Through: In person (through V/C)

versus

UNION OF INDIA THROUGH SECRETARY (R) AND ANR

.....Respondents

Through: Ms. Arti Bansal, CGSC for UOI

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

MADHU JAIN, J.

1. The petitioner has filed the present petition, challenging the Order dated 25.09.2018 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, the 'Tribunal') in O.A. No. 202/2018, titled ***Birendra Singh Kunwar v. Union of India through Secretary (R) & Anr.***, whereby the learned Tribunal dismissed the said O.A., observing as under:

“14. It is also well settled that there is no bar in continuance of the disciplinary proceedings even after the retirement of the Government servant for imposing the punishment as contemplated under Rule 9 of CCS (Pension) Rules, 1972, as held by the Hon'ble Apex Court in the case of Secretary, Forest Department vs. Abdur Rasul Chowdhury, AIR 2009 SC 2925).



aspect of the issues involved in this case have been clearly spelt out.

16. In the result, and for the foregoing reasons, we do not find any illegality in the impugned order and accordingly, the present OA is dismissed, being devoid of merit. There shall be no order as to costs.”

FACTS OF THE CASE

2. The brief background of the facts in which the present petition arises is that the petitioner was appointed as Deputy Field Officer ('DFO') (General Duty) in the Research and Analysis Wing, Cabinet Secretariat on 20.09.1976. He married Ms. Suman Kunwar on 11.12.1981, and a daughter was also born out of this wedlock on 18.09.1982. It is the case of the petitioner that in 1983, his wife, Ms. Suman deserted him and refused to grant him a divorce, since then she has been absent from his life.

3. In September 1983, during the subsistence of his marriage with Ms. Suman, the petitioner started cohabiting with one Ms. Manihal Devi, and two children, a son (born on 30.05.1984) and a daughter (born on 30.09.1985), were born from their relationship.

4. Pursuant to a complaint filed by Ms. Suman in June 1990, departmental proceedings were initiated against the petitioner on the charges of neglecting his wife and daughter by living with another woman. The proceedings culminated on 01.02.1994, with imposition of a major penalty of reduction in pay by four stages for a period of four years.



5. Thereafter, in February 2008, the petitioner was inducted into the Special Circuit (Ministry of External Affairs) for an overseas assignment. After induction, he submitted a representation dated 14.02.2008, seeking inclusion and recognition of Ms. Manihal Devi as his wife and their two children, as his family members in his Service Book, on the basis of long cohabitation. Subsequently, he applied for and obtained diplomatic passports for himself and the aforesaid family members from the Ministry of External Affairs on 13.03.2008.

6. The petitioner took over as Under Secretary, on promotion, on 11.08.2010. On 14.11.2011, he submitted his pension papers, as he was due for superannuation on 31.07.2012. However, on 16.12.2011, he was served with Charge Memorandum No. 4/1/2010-DO.II(A) dated 14.12.2011, *vide* which a disciplinary inquiry was initiated against him on the following Articles of Charges:

"ARTICLE OF CHARGE-I

That the said Shri B.S. Kunwar, SFO (DG) {now US(DG)}, ID No. 10928-T was inducted into Special Circuit in February 2008 for assignment abroad. After induction in Special Circuit i.e. MEA, he has submitted a representation for inclusion in his service records the name of Ms. Manihal Devi who was living with him for the last 24 years. He has further mentioned that he was having a living-in relationship with this lady and two children born out of his cohabitation with Ms. Manihal Devi. As per official records, Shri Kunwar was married with Ms. Suman according to the Hindu Rites and customs. The marriage of Shri Kunwar to Ms. Suman still subsists as it has not been annulled by any divorce/dissolution of marriage as per Hindu Marriage Act, Government servant are, however, restricted regarding marriage - (i)



no Govt. servant shall enter into or contract, a marriage with a person having a spouse living and (ii) no Govt. servant having a spouse living, shall enter into, or contract, a marriage with any person. The commission of act by Shri Kunwar is against Rule 21 (2) of CCS (Conduct) Rules, 1964. Further, such a marriage is null & void under the Hindu Marriage Act 1955.

By his aforesaid acts of omission and commission i.e. the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} has exhibited lack of absolute integrity and has acted in a manner which is highly unbecoming of a Government servant and has thereby, violated Rule 3 (l)(i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-II

That the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} while posted at Hqrs., Cabinet Secretariat, New Delhi submitted his particulars as a Group 'A' officer on 07.05.2008. In the said proforma, he mentioned the name of Ms. Manihal Devi as his wife. Whereas, as per the records, his wife's name is Ms. Suman. The marriage of Shri Kunwar with Ms. Suman still subsists as there was no legal divorce nor dissolution of marriage between them.

By his aforesaid acts of omission and commission i.e. the said Shri B.S. Kunwar, SFO (DG) {now US(PG)} has committed serious misconduct by exhibiting total lack of absolute integrity and has conducted himself in a manner which is highly unbecoming of a Government servant. He has, thereby violated Rule 3(I)(i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-III

That the said Shri B.S. Kunwar, SFO (DG) {now US(DG)} was inducted to Special assignment for posting abroad during February 2008. That the said Kunwar misrepresented the fact with the intention of



cheat and mislead the Department and applied for passports by mentioning his live-in companion Ms. Manihal Devi as his wife and two children born out of his cohabiting with Ms. Manihal Devi as his dependent family members. Shri Kunwar managed to obtain diplomatic passports fraudulently in respect of the said woman and her two children with the mala fied intention of taking them with him abroad in place of his legally wedded wife and legal children.

By his aforesaid acts of omission and commission, the said Shri B.S. Kunwar, SFO (PG) {now US(DG)} has committed serious misconduct by exhibiting lack of absolute integrity and has conducted himself in a manner which is highly unbecoming of a Government servant. He has, thereby violated Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.”

7. Aggrieved by the same, the petitioner filed O.A. No. 112/2012 before the learned Tribunal, challenging the aforesaid Charge Memorandum, however, the same was dismissed on 12.01.2012 at the admission stage, and the proceedings continued against the petitioner.

8. In the inquiry proceedings, the petitioner, *vide* Reply dated 13.01.2012, denied all the charges levelled against him.

9. The Inquiring Officer, *vide* its Report dated 03.10.2013, submitted its findings, holding that the Articles of Charges I & II against the petitioner did not stand established and that the Article of Charge III stood only partially established.

10. However, the Disciplinary Authority issued a Disagreement Note dated 29.12.2014 on the findings of the Inquiring Authority with respect to Articles of Charge II & III and held them to be proved



against the petitioner. The Disciplinary Authority observed that the petitioner had misrepresented while applying for diplomatic passports, and on the basis of such misrepresentation, he had misled the concerned authorities in getting diplomatic/official passports issued to persons who were legally not his family members thus, warranting the penalty of withholding his pensionary benefits.

11. Subsequently, in terms of Rule 15(3) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as, CCS (CCA) Rules), the statutory advice of the Union Public Service Commission ('UPSC') was sought on the quantum of punishment. *Vide* letter dated 05.11.2015, the UPSC considered Articles of Charge II & III as proved, observing as under:

"a) Article of Charge- II

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5.9 The commission observe that the CO should have taken action to annul his marriage in a court of law. Instead of that, he mentioned the name of Ms. Manihal Devi as his wife and thereby committed serious misconduct by exhibiting lack of integrity and violated Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

b) Article of Charge-III

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5.15 The commission observe that as per record the CO misrepresented while applying for passport and misled the authorities in getting diplomatic/official passports issued to persons who were not legally his family members/dependents. Therefore, Article-III of the Charge also stands established against the CO."

12. In view of the above, the UPSC advised that a penalty of permanently withholding fifty percent (50%) of the monthly pension



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otherwise admissible and 50% of the gratuity admissible, on a permanent basis, should be imposed on the petitioner. The said penalty was imposed upon him under Rule 9(1) CCS (Pension) Rules, 1972 (hereinafter referred to as, CCS (Pension) Rules), *vide* Order dated 16.01.2017.

13. Aggrieved by the aforesaid order of the learned Tribunal, the petitioner preferred the Impugned O.A. before the learned Tribunal. The learned Tribunal, however, was pleased to dismiss the O.A., aggrieved of which the petitioner has filed the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. The petitioner, appearing in person, submits that the learned Tribunal erred in not quashing the penalty order dated 16.01.2017. He places reliance upon Rule 9 of the CCS (Pension) Rules, which pertains to the President's right to withhold or withdraw pension in certain cases and recover the pecuniary loss caused to the Government. He submits that in the present case, there is neither any charge nor any finding against him of having caused any pecuniary loss to the Government.

15. The petitioner further submits that the respondent's interpretation of Rule 9(1), that pension and gratuity can be reduced even if there is no pecuniary loss caused, is untenable, being in conflict with Rule 8 thereof. Rule 8, read with GID(1), provides that after pension is sanctioned, its continuance depends on future good conduct, and it cannot be stopped or reduced except under Rule 8 for grave misconduct and serious crime. He submits that his acts do not



18. The petitioner submits that there was no concealment of information, the respondents were aware of his cohabitation with Ms. Manihal Devi when he was cleared for induction to MEA as the respondent department had the record of the earlier Disciplinary Enquiry held against the petitioner on the issue of his cohabitation. He also makes reference to the service records for family pension which mention his relationship with Ms. Manihal Devi as 'a second wedlock' and accepts their children for family pension. He submits that the same had been added following the advice of the Department of Personnel and Training ('DoP&T') and the Ministry of Law and Justice, allowing entering of names/details of children from the second wedlock.

19. Further, he submits that having already been inflicted with a punishment in 1994, imposing another penalty on him now for the same family issue amounts to double jeopardy.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

20. On the other hand, the learned counsel for the respondents submits that the petitioner, while holding the post of Senior Field Officer (GD), was inducted for an overseas assignment. While filling a proforma required to be submitted by Group 'A' officers, he mentioned the name of Ms. Manihal Devi, his live-in partner, and her two children, as his family members, despite the fact that his marriage with Ms. Suman Kunwar subsisted and had not been annulled by divorce or dissolution of marriage as per the Hindu Marriage Act, 1955.



21. Learned counsel further submits that Ms. Manihal Devi's application for passport showed the petitioner as her husband/spouse, while the passports of their children showed him as the father, whom they were to accompany/visit. He submits that the petitioner obtained diplomatic passports with the *mala fide* intention to take them abroad in place of his legally wedded wife and the legitimate child. Consequently, he was recalled from his attachment with the MEA, and a Departmental Enquiry was conducted against him under Rule 14 of the CCS (CCA) Rules, 1965, leading to the impugned penalty order.

22. Learned counsel for the respondents submits that the petitioner had *malafide* intentions and had concealed facts concerning his family circumstances by mentioning 'wife estranged since 1983, Department knows' in his Curriculum Vitae ('CV') dated 08.05.2007 and leaving the family particulars column blank. Consequently, when his CV was forwarded to the MEA, the family particulars column remained blank. Formal efforts to include Ms. Manihal Devi and her two children to the family particulars were initiated by the petitioner only after he joined MEA on 12.02.2008, *vide* his request dated 14.02.2008. However, this request for inclusion of their names in family particulars was rejected by Cabinet Secretariat on 03.04.2008. Meanwhile, without awaiting the decision on his request dated 14.02.2008, the petitioner, on 13.03.2008, applied for and subsequently obtained diplomatic passports in the names of these three persons, claiming them to be his family members.

23. The learned counsel also submits that the UPSC was consulted in the matter of the petitioner and as per the UPSC advice dated



05.11.2015, the petitioner was found guilty and the imposed punishment was suggested. The UPSC opined that the petitioner had committed grave misconduct by exhibiting lack of integrity and did not mend his ways despite a major penalty imposed on him in 1994.

24. He further submits that the petitioner's claim of double jeopardy is misplaced. In this regard, he submits that the first Departmental Enquiry in 1991 was conducted on the charges of neglecting his legally wedded wife and daughter by living with another woman, whereas, the second Departmental Enquiry was conducted for fraudulently obtaining a diplomatic passport for his live-in companion and the two children born from their illicit relationship, by suppressing the material facts, with the intention to cheat and mislead the Department.

25. The learned counsel for the respondents further submits that it being a premier security organisation, high standards of integrity and personal and professional excellence are expected from its officials. However, the petitioner, by his acts failed to maintain the requisite high standards of personal integrity. His conduct was not only callous but also violated the personal ethics, considering his association with an organisation of a sensitive nature.

26. In support of the aforesaid submissions, he places reliance upon the Judgments of the Supreme Court in *Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury*, (2009) 7 SCC 305, to emphasize upon Rule 9 of CCS (Pension) Rules, which is identical to Rule 10(1) of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter referred to as 'West Bengal Rules'), and *Union of India*



v. *B. Dev*, (1998) 7 SCC 691, which involves interpretation of Rules 8 and 9 of the CCS (Pension) Rules.

ANALYSIS AND FINDINGS

27. We have considered the submissions of the learned counsels for the parties.

28. The issue that arises for consideration is whether the respondents were justified in imposing the penalty of permanently withholding 50% of the petitioner's monthly pension and gratuity, by holding the Articles of Charge II & III levelled against the petitioner to be proved.

29. We begin our discussion with Section 494 of the IPC (now Section 82 of the Bharatiya Nyaya Sanhita, 2023). The petitioner contends that his first marriage does not exist in light of the second part of the Exception to the Section. He contends that his first wife, Ms. Suman, deserted him in March 1983 and had been continuously absent from his life for over thirty years without any communication. Consequently, his subsequent relationship with Ms. Manihal Devi, formalized through prolonged cohabitation, is not illegal. We find no merit in the said submission of the petitioner. However, we are of the view that the legality of the petitioner's relationship with Ms. Manihal Devi is not at issue before us. Accordingly, we restrict ourselves to the issue whether the petitioner has exhibited lack of integrity by mentioning the name of Ms. Manihal Devi as his wife and her children as his family for obtaining diplomatic/official passports.

30. The learned counsel for the respondents submits that the petitioner has concealed material facts and circumstances, and has



misrepresented with the intention to cheat and mislead the Department. We find no merit in the said submission of the respondents. The petitioner disclosed his live-in relationship with Ms. Manihal and his wife, Ms. Suman's, continuous absence, throughout his service. In this regard, it is pertinent to note that the charges levelled against the petitioner stem from the same family issue for which Departmental Enquiry had been instituted and he had been punished in 1994, with imposition of a major penalty. Therefore, the petitioner's relationship with Ms. Manihal Devi was a part of his service records, and there was no concealment by the petitioner.

31. The record clearly establishes that the petitioner never concealed his relationship with Ms. Manihal Devi. He consistently disclosed Ms. Manihal Devi and her children in the service records, identifying her as his wife based on prolonged cohabitation for the purposes of family pension benefits. It is also on records of the Inquiry Officer acknowledged three-decade long cohabitation and opined that the department had, to some extent, acknowledged that the petitioner's real family comprises of Ms. Manihal Devi. The Inquiry Officer also took note of the fact that the petitioner's earlier representation to include names of Ms. Manihal Devi and their children had been turned down, indicating the respondent's knowledge of the petitioner's family affairs. The relevant portions read as under:

“Having said this, there is no denying the fact that the CO has continuously cohabited with Ms. Manihal Devi for almost 30 years now and that relationship has acquired sense of finality, whether sanctioned by law or not. He is not a philanderer and his actions have been



guided by the intention of providing what is best for what he believes to be his real family.

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Actions of the CO in seeking legitimacy for his relationship with Ms. Manihal Devi and their children, therefore, need to be viewed in the context of his extenuating circumstances. He has not tried to fraudulently incorporate the names in the family particulars proforma submitted on 7.5.08. Cross-examination of the Prosecution Witness-I has brought out that the CO's earlier representation (PE-1) for inclusion of these names in the service records had been turned down on 3.4.08 (PE-2) so the Pers Division was well aware of his position."

32. Therefore, we are of the opinion that the petitioner maintained transparency, at all times, with the respondents, regarding his relationship with Ms. Manihal Devi, and had no *mala fide* intention to obtain diplomatic passports through misrepresentation or by defrauding the Department.

33. The penalty imposed upon the petitioner was subsequent to the Departmental Enquiry under Rule 9 of the CCS(CCA) Rules. In *Secretary, Forest Department & Ors.* (supra), the Supreme Court relied upon Rule 10(1) of the West Bengal Rules, which empowers the Governor to withhold pension where the pensioner is found, through departmental or judicial proceedings, to have caused pecuniary loss to the Government through grave misconduct or negligence during service. Rule 10(1) of the West Bengal Rules reads as under:

"10. Right of the Governor to withhold pension in certain cases.

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period,



(d) the Public Service Commission, West Bengal, shall be consulted before final orders are passed.

Explanation—For the purpose of this article—

(a) a departmental proceeding shall be deemed to have been instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to have been instituted—

(i) in the case of criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

(ii) in the case of a civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.”

34. Similarly, in **B. Dev** (supra), the Supreme Court examined the scope of Rules 8 and 9 of the CCS (Pension) Rules, and held that while Rule 8 makes the grant and continuance of pension subject to pensioner’s future good conduct, Rule 9 vests in the President with the authority to withhold or withdraw pension or gratuity, wholly or partly, upon proof of grave misconduct or negligence in departmental or judicial proceedings, subject to mandatory consultation with the UPSC before passing such orders. Rules 8 and 9 of the CCS (Pension) Rules as they stood at the relevant time read as under:

“8. Pension subject to future good conduct

(1)	(a)	<i>Future good conduct shall be an implied condition of every grant of pension and its continuance under these</i>
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		<i>rules.</i>
2	(b)	<i>The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.</i>

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(2) Where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

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9. Right of President to withhold or withdraw pension

1[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

35. The said Rules empower the respondents to withhold or withdraw pension of a government servant in cases of 'grave misconduct or negligence'.



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36. In the instant case, we find that the petitioner disclosed throughout his service, his relationship with Ms. Manihal and his wife, Ms. Suman's continuous absence. The record of the same was also available with the respondents in form of the disciplinary proceedings culminating on 01.02.1994, with the imposition of a major penalty on the petitioner. He has therefore not committed any 'grave misconduct or negligence' as contemplated under Rule 9, as referred hereinabove. He has also not concealed anything from the respondents.

37. The Judgments of the Supreme Court relied upon by the respondents cannot come to their aid, the same having being decided in entirely different facts and circumstances.

38. While a Government servant charged with lack of devotion to duty, may be held guilty of grave misconduct, depending upon the nature and gravity of the conduct, the learned Tribunal erred in characterizing the petitioner's actions as 'grave/gross misconduct', as the petitioner never concealed his relationship with Ms. Manihal Devi. In view of this, the Disciplinary Authority's assertion that the petitioner lacks personal integrity is also misconceived. Neither the Disciplinary Authority nor the learned Tribunal was correct in upholding the penalty imposed on the petitioner. Treating respondent's efforts to include Ms. Manihal Devi and her children in the family details proforma as the sole basis for establishing grave misconduct is erroneous.

39. Further, neither was any charge of pecuniary loss framed against the petitioner, nor were there any findings on the same.



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40. We, therefore, find no legitimate reason for the respondents to permanently withhold 50% of the petitioner's monthly pension and gratuity or for denying family pension to the petitioner's dependents.

CONCLUSION

41. In light of the aforesaid, the Impugned Order passed by the learned Tribunal cannot be sustained, and is hereby set aside.

42. In the conspectus of the facts and circumstances of the case, we are of the considered opinion that the petitioner is entitled to his monthly pension and gratuity amount, with effect from 01.08.2012.

43. Accordingly, we direct the respondents to release the aforesaid amounts to the petitioner, along with interest on the delayed payments at the rate of 6% per annum, from the date they became due to the date of actual payment.

44. The respondents are further directed to consider the petitioner's plea to include the name of Ms. Manihal Devi and her children in the Pension Payment Order for family pension and CGHS facilities.

45. The above directions must be complied with by the respondents within a period of eight weeks from today.

46. The petition is disposed of in the above terms.

MADHU JAIN, J.

NAVIN CHAWLA, J.

JANUARY 07, 2026/Av