

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.40 OF 2001

ALLAHABAD THIS THE 20th DAY OF November, 2006

HON'BLE DR. K.B.S. RAJAN, J.M.

HON'BLE MR. A. K. SINGH, A.M.

Somaroo, Son of Sri Jagga,
Ex-Carpenter, St.no. 5112,
GSD, Diesel Locomotive Works, Varanasi.
Resident of Village Jalali Patti (Nai Basti)
P.O. Bhullanpur, P.A.C. Varanasi.

.Applicant

By Advocate : Shri D.S.P. Singh

Versus

1. Union of India
through its Secretary,
Ministry of Railway,
Rail Bhawan, New Delhi.
2. Controller of Stores, (Depot)
Diesel Locomotive Works, Varanasi.
3. Deputy Controller of Stores,
Diesel Locomotive Works,
Varanasi.
4. District Controller of Stores (Depot)/
Disciplinary Authority,
Diesel Locomotive Works,
Varanasi.
5. General Manager,
Diesel Locomotive Works,

Varanasi.

. Respondents

By Advocate : Shri Amit Sthalekar

O R D E R

HON'BLE DR. K.B.S. RAJAN, J.M.

The admitted facts of the case are as under:-

- (a) On 19.9.1996, the applicant while discharging his duties allegedly quarreled with Shri Sugai, and assaulted him with Latha, which caused injuries on his head. Police made investigation and after investigation submitted charge sheet against Shri Samaroo u/s 33,504 and 506 of the IPC.
- (b) The applicant was taken up departmentally and a memorandum dated 18.1.1996 was served upon the applicant. The charges leveled against the applicant were proved in the enquiry. The applicant was imposed the punishment of Compulsory Retirement vide order dated 9.1.1998.
- (c) In the criminal proceedings, the applicant was acquitted on the basis of a compromise and also on the finding that the prosecution did ^{not} prove the charge.
- (d) After the acquittal, the applicant filed representations as contained in Annexure 12 & 13 for review of the punishment of compulsory retirement and his reinstatement in service. The representations were considered and the same were disposed of vide order dated 17.7.2000 as contained in Annexure 3 of the application. The applicant

ln

represented before the General Manager who rejected the same by a reasoned and speaking order dated 21.11.2000 as contained in Annexure 2.

2. Respondents contested the O.A. The applicant did not prefer a statutory appeal. The applicant knowing the consequences of the said order of punishment accepted the same and claimed for payment of all settlement dues. The applicant is receiving Superannuation Pension @ Rs.1372/- plus Dearness Relief per month. That during the departmental enquiry the informant Shri Sugul deposed the events but in Session's Trial he detracted and also entered into compromise with the accused. In view of the compromise the learned court acquitted the applicant. The aforesaid conduct of the informant Shri Sugul has been taken up by the Competent Authority ~~as~~ and ^{he} _L has been served with a minor memorandum. The relief sought for by the applicant for quashing/setting aside the order dt. 9.1.1998 is barred by limitation.

3. Arguments were heard and documents perused. The main reason for rejection of the representation filed by the applicant after the order of acquittal by the criminal court is that the acquittal cannot be construed to be as one of honourable acquittal. The contention of the respondents that the applicant having already accepted the penalty order and drawn

the benefits cannot now turn around and claim reinstatement may perhaps be based on the decision of the Apex Court in the case of *State of Punjab v. Krishan Niwas*, (1997) 9 SCC 31 wherein it has been held as under: -

3. The admitted facts are that the respondent was charged for an offence under Section 302 IPC. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 IPC was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated 1-3-1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back wages. The respondent accepted it and joined duty on 5-6-1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The trial court dismissed the suit. On appeal, the Additional District Judge reversed the judgment of the trial court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

4. The learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on 5-6-1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil court would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate court stand set aside and that of the trial court stands confirmed.


4. The situation in this OA is slightly different. The applicant would have perhaps remained silent had the decision in the criminal case been other than what has emerged. His contention is that he has been honourably acquitted, and hence, the decision in the departmental proceedings should undergo a corresponding review. There is substance in the said contention, for more than one reason. If there is a subsequent development, the same may be taken into account to revive the earlier order. Apart from the same, in the instant case, there has been a misinterpretation of the judgment of the Criminal Court. The respondents are under the mistaken impression that the acquittal is purely on account of compromise. The judgment clearly spells out that the case against the applicant is a case of no evidence. The relevant para is reproduced below:

"In his cross examination the complainant has admitted that he has entered into compromise with the accused and the compromise has been filed in the court. Witnesses Birbal, P.W. 2 and Chinta Singh P.W. 3 have clearly stated that the accused did not assault or abuse the complainant in their presence. They have been cross examined by the prosecution. There is no other evidence on record. In view of the compromise accused is entitled to be acquitted of the charge U/S 323/504/506 I.P.C. Also here being not an iota of evidence on record, I find that the prosecution has failed to prove its case and accused Somarro is entitled to be

acquitted of the charges leveled against him."
(Emphasis supplied)


5. As the criminal case had been decided on merit the acquittal cannot be held to be one of technical acquittal. The authority which passed the order dated 21.11.2000 had misconstrued the judgment of the Criminal Court. Of course, additional reason that in the departmental enquiry the finding has been that the applicant was found guilty of his misconduct and the same would have held good had the judgment in the criminal court been otherwise than acquittal on merit. Thus, the case of the applicant has to be reviewed from this stage of consideration of the representation of the applicant after the judgment of the criminal court has been pronounced. Though the applicant has prayed for quashing of order dated 9.1.1998 (penalty order), as he had not adverted in detail against the said order nor adduced any valid grounds challenging the decision making process, his prayer for quashing of order dated 09.01.1998 cannot be acceded to, though the prayer for quashing of order dated 21.11.2000 and 17.7.2000 is fully justified.


6. In view of the above, the OA is partly allowed. Order dated 27.11.2000 and 17.7.2000 (Annexure 2&3 respectively) are hereby quashed and set aside. The respondents are directed to reconsider the representation dated 26.7.2000 and subsequent reminder



keeping in view, that the acquittal of the applicant in the criminal proceedings is based on merit, and pass suitable orders. In case the authorities are of the view that the penalty of compulsory retirement should be modified, any other penalty of lesser gravity can be imposed and the same may be accompanied by other conditions relating to the entitlement to pay and allowances for the period from the date of compulsory retirement till the date of reinstatement. The decision of the authorities in this regard is purely at their discretion.

7. Under the above circumstances, there shall be no order as to costs.


Member-A


Member-J

/ns/