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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD

BENCH : AT HYDERABAD :

O.A.No.179/90.

Date of Decision : 27-11-1990.

✓ Mrs.Kalavathi Rao,

....Applicant

Vs.

✓ 1. The Chief Engineer (Construction),
South Central Railway, Rail Nilayam,
Secunderabad.

✓ 2. Chief Administrative Officer (CCN),
South Central Railway, Rail Nilayam,
Secunderabad.

....Respondents

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✓ Counsel for the Applicant : M/s Noushad Ali
M.Liyaqat Ali

✓ Counsel for the Respondents : Shri N.R.Devaraj, SC for Rlys.

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CORAM:

✓ HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (JUDICIAL)

✓ HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (ADMINISTRATIVE)

✓ (Judgment of the Division Bench delivered by
Hon'ble Shri J.N.Murthy, Member (J)).

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This is an application filed to declare the
action of the respondents in withholding pay and allowance from
30-6-84 to 18-9-86 due and payable to the applicant's
husband consequent on his acquittal in C.A.No.532/86 by the
Supreme Court of India and deemed reinstatement into service
as illegal, contrary to law and further direct the respon-
dents to pay the said amounts with all other consequential
benefits.

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The facts of the case are as follows :-

The applicant is the wife of late Mangapathi Rao who expired on 20-2-89 while he was in service as Works Maistry at Tandoor in the Department of South Central Railway. The applicants husband originally recruited as works maistry through Railway Commission, Bombay in the year 1953, dt.3-3-58 with No.01456770 and appointed at Bhaswal after training at Western Railway. Subsequently at his request he was transferred to Secunderabad under the control of XEN/doubling, Secunderabad for the work of SC-KZJ Doubling as Works Maistry in the year 1962. By virtue of his sincere and hard work, he was promoted as Asst.Inspector of works during the year 1962. He was further promoted as Inspector of Works with independent charge. As Inspector of Works he rendered great service to the department which was appreciated by the then Hon'ble Union Minister for Railways Shri Madhu Dandavate. He was awarded meritorious certificates and also cash awards in recognition of his hard work. While so in the year 1982 the State SPE/CBI filed a case in C.C.No.48/82 under section 120(B) IPC read with Sec.420 IPC and Sec.5(2) read with 5(1)(d) of the Prevention of Corruption Act against both the husband of the applicant late Y.Mangapathi Rao and her son Y.Rajendrakumar. The main allegation is that the deceased and his son entered into criminal conspiracy and cheated the Railway Administration by appointing the applicant's son as Casual Labourer, though he was actually

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less than 18 years of age. The Lower Court convicted both the accused through its judgment dt.30-6-84. On the basis of the lower courts conviction order passed in C.C.48/82 dated 30-6-84 a memorandum notice was issued to the applicant's husband by the Dy.Chief Engineer(C) Central Disciplinary Authority dated 28/30-7-84 proposing to impose the penalty of dismissal from service in exercise of the powers conferred by Rule 14(1) of the Railway Service Rules, 1968. Accordingly the Dy.Chief Engineer (C), Secunderabad passed removal order on 5-11-1984 from the date of applicant's husband's conviction by the lower court i.e. 30-6-84. An appeal was preferred by the husband of the applicant to the Chief Engineer(C), Secunderabad but invain. The 1st respondent confirmed the removal order in his order No.CE(C)V/171 dt.17-6-85 and it has become final.

Aggrieved by the judgment and conviction of the Principal Special Judge for ACB Cases, Hyderabad, an appeal was preferred to the Hon'ble High Court in Criminal Appeal Nos. 486/84 and 487/84 and they were disposed of on 5-3-1987. Both the husband and son of the applicant were acquitted of the charges under section 120(8) I.P.C. The son was acquitted of all the charges and ordered refund of fine amount also. Whereas the husband of the applicant was convicted of the charges under Section 420 I.P.C. and Section 5(2) read with 5(1)(d) of Prevention of Corruption Act. He was sentenced to imprisonment till raising of

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court under section 420 I.P.C. and took a fine of Rs.3000/-.

The applicants husband late Y.Mangapathi Rao has filed mercy petition on 14-3-86 to Chief Engineer (Con), Secunderabad for reinstatement or at least as a fresh entrant. His mercy petition was considered on humanitarian grounds by the General Manager as the Revising Authority to that effect, Chief Engineer appointed him as works maistry by his order No.121/86 dated 4-9-86. While so the Criminal Appeal filed by the late husband of the applicant in Supreme Court in CrI.A.No.532/86 against the orders of the High Court passed in CrI.A.Nos.486 & 487/86 was allowed on 26-9-88. The Supreme Court clearly stated that the appeal was allowed and the conviction and sentences passed against the appellant are set aside and the fine amount if any paid may be refunded. The applicant's husband expired on 20-2-89 while he was in service even before he assumed the charge of his earlier post as Inspector of works. The applicant and her family making rounds to the Railway authorities for arrears and for other benefits. At last the Railways have decided to give gratuity, provident fund and difference of salary from the date of fresh appointment to the date of his sudden death. After repeated representations the Railways authorities has finalised the applicant's pension by giving continuance of service, Gratuity, provident fund, the difference of salary of I.O.W. for the date of fresh entry as Maistry upto the death. But strangely the respondents have not given two years salary and other consequential benefits during the period of removal from service i.e. from 30-6-84 to 18-9-86. Inspite of several requests the respondents has not furnished any particulars regarding calculation of arrears and other benefits.

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Applicant further states that the Disciplinary Authority i.e. Dy.Chief Engineer (Con), Secunderabad had taken a decision to treat the period during which the applicant's husband was under removal to be treated as dies-non. It is submitted that the respondents have no authority of law to treat the said period as dies-non. No notice was given before such withholding of the salary during the period to which the employee was legally entitled to. The applicant further submits that under F.R.54-A of the Railway Fundamental Rules it is mandatory that the period of absence from duty ~~is~~ in a case where the dismissal of a Railway Servant is set aside by a court of law and such a person is re-instated without holding any further enquiry, shall be regularised and the employee shall be paid pay and allowances as per the provisions of the Sub-Rule 2 or 3 as the case may be. Under Sub Rule 3 where the dismissal is set aside by the court on merits of the case, the period shall be treated as duty for all the purposes and he shall be treated as on-duty for all the purposes and he shall be paid fully pay and allowances. After the Supreme Court orders of acquittal, order of removal which was only account of the conviction in the courts below, the husband of the applicant is deemed to have been reinstated and that he became entitled for the pay and other allowances for the said period. The applicant submits that the respondents have given the continuity of service and the benefits such as Pension, gratuity etc. were calculated accordingly. It

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is thus incumbent on the part of the respondents to treat the period during which the applicant's husband was kept out of service as duty and pay the necessary salary and other benefits. It is further submitted that the amounts accrued towards group insurance, provident fund and gratuity were paid through cheques dt. 20-4-89, 29-5-89 and 17-11-89 respectively and the applicant informed that no other amounts are due and payable to her. No orders passed on the representation made by the applicant on 26-1-89. Hence this petition.

Respondents in their counter states that the authorities considered the case of the deceased employee Shri Y. Mangapati Rao after re-examining the case and it has been decided to treat the intervening period from 30-6-84 to 18-9-1986 as on duty and to pay all the dues including all other consequential service benefits within three months from the date of disposal of the Original Application.

We have heard Shri Noushad Ali, learned counsel for the applicant and Shri N.R. Devaraj, learned standing counsel for the Railways. The respondents agreed to pay all the emoluments claimed in the petition. So we feel that no further orders are necessary in this case except a direction to the respondents to pay all the emoluments for which she is entitled within two months from the date of disposal of this application as undertaken in the counter.

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In the result, we direct the respondents to pay the pay and allowances from 30.6.1984 to 18.9.1986 due and payable to the applicant's husband consequent on his acquittal in Criminal Appeal No.532/86 by the Supreme Court of India, within a period of two months from the date of receipt of this Judgment. The application is accordingly disposed of. There is no order as to costs.

MS

(J.NARASIMHA MURTHY)
MEMBER (JUDL.)

R. Balasubramanian

(R.BALASUBRAMANIAN)
MEMBER (ADMN.)

Dated: 27 November, 1990.

9/11/90
29/11/90

Sd Deputy Registrar(Judl)

To

1. The Chief Engineer (Construction)
S.C.Railway, Railnilayam, Secunderabad
avl/vsn
2. The Chief Administrative Officer(CCN)
S.C.Railway, Railnilayam, Secunderabad.
3. One copy to Mr.Noushed Ali, and M Liyawat Ali, Advocates
3-5-594, Himayatnagar, Hyderabad.
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
5. One copy to Hon'ble Mr.J.Narasimhamurty, Member(J) CAT.Hyd.Bench.
6. One spare copy.

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