

(200)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

OA 503/92.

Dt. of Order: 31-1-95

Jayasingh

... Applicant

vs.

1. Union of India represented by
General Manager,
South Central Railway.
2. Senior Divisional Personnel Officer,
South Central Railway, Guntakal.
3. Addl. Divisional Railway Manager,
South Central Railway, Guntakal.

... Respondents

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Counsel for the Applicant : Shri V. Krishna Rao

Counsel for the Respondents: Shri D. Gopal Rao, SC for Rlys.

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CORAM:

THE HON'BLE SHRI A.V.HARIODASAN : MEMBER (J)

THE HON'BLE SHRI A.B.GORTHI : MEMBER (A)

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... 2.

(Order passed by Hon'ble Shri A.V.Haridesan, Member (J)).

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The applicant who commenced his service as Khalasi on 21-10-69 was placed under suspension as he was involved in a Criminal Case on 23-3-81. As the applicant was convicted for offence under section 302 of I.P.C. and sentenced for life imprisonment by the Sessions Court, the Respondent No.2 by his order dt.16-1-82 dismissed him from service. The applicant filed an appeal against his conviction and sentence before the High Court of Karnataka. The High Court vide its judgement dt.6-7-83 set aside the conviction and sentence but found him guilty of offence punishable under section 352 of the I.P.C. Observing that as the applicant had already undergone two years imprisonment, no specific sentence was awarded and he was set at liberty. After the Judgement of the High Court of Karnataka, the applicant made an appeal to the DRM claiming reinstatement, which was rejected by the Addl. Divisional Railway Manager, and the order was communicated to him on 24-10-83. He preferred a revision petition to the General Manager, which hangfire for quite some time. As the Union took up the matter, the General Manager, by his order dt.16-2-92, after consideration of the revision petition held that the penalty of removal imposed on the applicant would stand. It is impugning that order and praying that the respondents may be directed to reinstate the applicant into service with all consequential benefits that the applicant has filed this application. The applicant has in this application alleged that none of the authorities who issued

the impugned orders has taken into consideration the relevant factors before issuing the impugned order of removal from service.

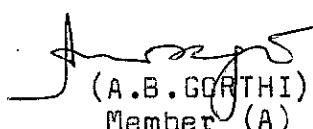
2. The Respondents in their reply statement seek to justify the impugned order on the ground that the fact that the applicant was found guilty of offence under section 352 and that he had been undergoing imprisonment for a period of two years is sufficient ground to dismiss him.

3. Heard the learned counsel for the parties. We have also apart from going through the material papers filed, perused the file which led to order of applicant's removal, the order in appeal as also the order passed by the General Manager in revision. A copy of the judgment of the High Court of Karnataka has also been made available for our perusal. A perusal of the entire file of the Department, which lead to the removal of the applicant, the refusal to modify the penalty after the High Court's judgment and to the order of the General Manager holding that the penalty of removal would stand does not disclose that the conduct which lead to the conviction of the applicant has been taken into account. It is seen that apart from the applicant being held guilty and convicted under section 352 of I.P.C., the involvement and the conduct which lead to his conviction has not been taken into consideration. The removal/applicant from service when

he was convicted and sentenced for an offence under section 302 of the I.P.C. is fully justified because a person who is convicted under section 302 of the I.P.C. for life imprisonment cannot be retained in service. But when the High Court set aside the conviction and sentence of the offence under section 302 of the IPC and found him guilty of a minor offence under section 352 of IPC and when the applicant preferred appeal for reconsideration, the competent authority should have considered the contentions of the applicant and taken a decision.

A reading of the judgment of the High Court of Karnataka would indicate that the applicant had only slapped the deceased along with the another and no where it is stated that the applicant had any intention to cause death to the deceased who himself has been described as quarrelsome fellow. This aspect according to us deserves serious thinking while considering the penalty to be imposed. But unfortunately in this case it appears that none of the authorities including the General Manager has considered in detail the involvement in the criminal case and his conduct which lead to the conviction and taken a decision as to what should be the penalty to be imposed on him. Therefore we are of the considered view that the matter should go back to the General Manager for re-consideration and a fresh disposal in the light of the observations made above...Accordingly the application is disposed of with a direction to the respondent No.1 to re-consider his revision

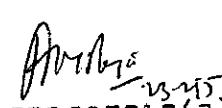
order dt.16-2-92 in the light of the observations made above and to pass appropriate order within a period of two months from the date of communication of a copy of this order. There is no order as to costs.


(A.B. GORTHI)
Member (A)


(A.V. HARIDASAN)
Member (J)

Dt. 31st January, 1995.
Dictated in Open Court.

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Amulya
DEPUTY REGISTRAR(J)

To

1. The General Manager, Union of India,
South Central Railway, Secunderabad.
2. Senior Divisional Personnel Officer,
South Central Railway, Guntakal.
3. Addl. Divisional Railway Manager,
South Central Railway, Guntakal.
4. One copy to Mr.V.Krishna Rao, Advocate,
CAT, Hyderabad.
5. One copy to Mr.D.Gopal Rao, SC for Railways,
CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

YLKR