

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00862/2017

DATED THIS THE 19TH DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

Halurameshwara,
GDS BPM, Hirekerehalli, BO,
A/w Molkalmuru SO – 577 535
Chitradurga District
.....Applicant

(By Advocate Shri B. Venkateshan)

Vs.

1. Union of India,
Represented by the Secretary,
Department of Posts,
Dak Bhavan,
New Delhi – 110 001

2. Postmaster General,
South Karnataka Circle,
Bangalore – 560 001

3. Superintendent of Post Offices,
Chitradurga Dn,
Chitradurga – 577 501

....Respondents

(By Shri S. Sugumaran, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. This is a matter in which in a murder case as a co-accomplice applicant was also convicted under Section 302 of the IPC. The Hon'ble High Court did not find it sufficiently grave to view the evidence against him without even a twinge of doubt and had granted an acquittal. Therefore, the trite law is that once he is under the shadow of conviction, he must be dismissed from service and after that shadow is removed by the Appellate Court he can be taken back into service. The question then is that, is he entitled to the pay and allowances for the period in which he was not working and was in jail? In paragraph 20 of that Appellate Order, it is mentioned that *"It is further evident that it is the evidence of PWs 11 and 12 which forms the basis for the case of the prosecution. The learned counsel would contend that it would be unfair to hold that the case against the accused has been established only on the basis of the evidence of these two witnesses when the complaint itself is an after thought."* It goes on to say that *"the alleged recovery of aluminium phosphide from the possession*

of accused No. 1 and 2 is again a co-incidence which cannot be readily accepted, if the intention of the accused was to commit the murder of deceased by administering such poison, it is unusual that both the accused continued to be in possession of such poisonous material and that would carry it on the person and would also make voluntary statements of such possession.” The issue therefore was whether Section 27 recovery was followed or not to establish the presence and juncture of the accused No. 2 who is the applicant herein in the matter. It is obviously a matter of conjecture. Therefore this is a case of prosecution failing to establish the case beyond all reasonable doubt. That in other words means persistence of some doubts still lingers. This is not a case which we interfere on the part of the accused in the murder case where the issue was whether to what extent the juncture of the applicant could be established in the issue. Even though PW 11 and PW 12 had given evidence against the applicant, it was disbelieved for the reason that it may not be possible to assume that even after the death, and 2 months and 7 days have elapsed after it, the accused will be keeping the poison with them. Therefore this ground will not come to the rescue of the applicant, in other case also, after having not worked during that period and was in jail, it cannot be assumed that his contribution to the employer was available and was prevented by the employer. It is not a case like that.

2. Therefore, there is no merit in the OA. The OA is dismissed. No order as to costs.

(DINESH SHARMA)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00862/2017

Annexure A1 Copy of the judgment dated 07.12.2013 of Sessions Court BLY

Annexure A2 Copy of the SPOs letter dated 08.01.2014

Annexure A3 Copy of the SPOs letter dated 05.02.2014

Annexure A4 Copy of the representation dated 30.04.2014

Annexure A5 Copy of the DPS letter dated 12.09.2014

Annexure A6 Copy of the HC Dharwad Bench order dated 07.04.2014

Annexure A7 Copy of the representation dated 04.02.2015

Annexure A8 Copy of the PMG memo dated 04.06.2015

Annexure A9 Copy of the judgment of Hon'ble High Court dated 13.03.2017

Annexure A10 Copy of the representation dated 15.05.2017

Annexure A11 Copy of the representation dated 15.05.2017

Annexure A12 Copy of the representation dated 16.06.2017

Annexure A13 Copy of the representation dated 16.06.2017

Annexure A14 Copy of the Memo dated 25.07.2017

Annexure A15 Copy of the representation dated 18.09.2017

Annexure A16 Copy of the memo dated 27.09.2017

Annexure A17 Copy of the memo dated 27.09.2017

Annexure A18 Copy of the representation dated 06.11.2017

Annexure A19 Copy of the representation dated 18.11.2017

Annexure A20 Copy of the representation dated 09.10.2017

Annexure A21 Copy of the SPOs letter dated 24.11.2017

Annexures with reply statement

Nil

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