

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01346/2015

DATED THIS THE 04TH DAY OF SEPTEMBER, 2018

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

HON'BLE SHRI C V SANKAR, MEMBER (A)

Sri Kashiviswanath Rao Murari

S/o. Venkataiah Murari

Aged about 44 years,

R/of Plot No. 130, Krupa Nagar,

Mantur Road, Hubli,

Dharwad District – 580 020

...Applicant

(By Advocate Shri.Aravinda Gowda Patil)

Vs.

1. Union of India,

By its Secretary,

Ministry of Railway Department

Rail Bhavan,
New Delhi – 110 001.

2. Senior Divisional Signal and
Telecommunication Engineer/UBL,
South Western Railway,
Hubli – 580 020

3. Divisional Signal and
Telecommunication Engineer/UBL,
South Western Railway,
Hubli – 580 020

4. Assistant Signal and Telecommunication
Engineer/M/I/UBL,
South Western Railway,
Hubli – 580 020

5. The Senior Divisional Personal Officer,
South Western Railway,
Hubli – 580 020

.....Respondents

(By Shri J. Bhaskar Reddy, Counsel for the Respondents)

O R D E R (ORAL)

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

This is a matter which we had disposed off earlier. Under Rule 19 on conviction a right accrues to the governance system to remove an employee. The offences charged against the applicant was under Section 498 A and Section 302 of the IPC. Somehow it appears to us that it was made to brought to the notice of the Hon'ble High Court that the offence is only under Section 498 A and therefore much more lenient view ought to have been taken. We do not want to make any further comments on this. At that point of time when the OA was filed the applicant was still in jail. That itself will suffice and nothing more. On any conviction under any section of the Penal Code or any of the cogent statutory provisions, it is incumbent upon the employer to remove the employee if it is found that his presence in the governance system will vitiate the atmosphere in that particular office. This is a right of predominant nature and there cannot be any question of interference in this. But then it appears that the Hon'ble Apex Court had since acquitted. But thereafter Annexure-A9 seems to be issued. We quote from it:

"No. H/P92/V/2013/KVR

Date 15.05.2014

Sri Kasi Vishwanatha Rao

Ex Khalasi Under SSE/SIG/STR

Resident of Plot No. 130

Krupa Nagar Mantur Road,

Hubli Dist Dharwad

Revision Petition Advice No. 03/2014

Sub: Revision Petition against the penalty of removal from service

Ref: 1) Penalty order No. H/SG.Misc/DAR of 19.09.2001

2) Appeal advice of even No. dtd 19.12.2013

3) Your revision petition dtd 27.01.2014

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The undersigned as RA has carefully considered your revision petition cited above, along with the relevant records under Rule No. 25 (V) of (D&A) Rules 1968 and ordered as under:-

"I have gone through article of charges, speaking order of DA, Decision of appellate authority representation of charged employee (CE) and come to conclusion as under:-

1. The CE was removed from service under 14 (1) of Railway Servants (D&A) Rules 1968 as DAR enquiry was not feasible in the case. DA has imposed penalty of the "removal from service" on the basis of conviction of CE vide memorandum no-H/SG.Misc/Dar/DSTE/KVM dated 01.08.2001 as employee CE convicted in criminal charges.

2. Hon'ble Supreme Court given the judgment based on item no (26) and (27) of judgment Dt. 03.07.2013 that facts produced creates doubt the dying declarations and passed the order that "conviction recorded by the courts below are set aside"

3. In view of acquittal of CE based on doubt/Technical grounds vide railway board master circular 67.NoE (D&A) 2001/RG6-3 dated 20.10.2002 item no 18, states that "if it is facts, circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/Acquitted in the criminal case on the merit (without benefit of doubt/or on technical grounds) then the departmental case may be reviewed if the employee concerned makes a representation in this regard"

4. Therefore in view of the above CE is not fit for the public services and "The penalty imposed by the DA, Confirmed by the Appellate authority is upheld".

2) Accordingly the penalty of removal from service imposed vide penalty order cited above and confirmed vide appeal advice cited above, is here by "CONFIRMED"

Please acknowledge receipt of this order.

Signature:

Name:- (Ghanshyam Verma)

Designation of the Sr.DSTE/UBL

Revising Authority”

2. The issue was that the dying declaration made by the victim was not recorded correctly and therefore the Hon'ble Apex Court had acquitted the applicant. But the fact remains that conviction or acquittal in a criminal court is not akin to the departmental processes which is civil in nature. The element of and the quantum of evidence required in a criminal case to sustain a conviction and the process in a civil nature are entirely different. Preponderance of probabilities have more play in civil parlance than under criminal jurisprudence. We have therefore carefully gone through the circumstances and the charge in the departmental proceedings. It is well within the right of the departmental authorities to hold that even in case of an acquittal in a criminal case it is possible for the departmental authorities to take a different view especially in a case of murder coupled with dowry harassment which will destroy the fabric of discipline and integrity in government service. The applicant may be acquitted of a criminal offence but that is not to mean that *ipso facto* it will be a ground for reinstatement with backwages. We, after looking into the matter, hold that the allegations raised in the OA as pleadings do not warrant interference at our hands. The contention put up for the revision petition that his wife had met with an accident in his absence and by circumventing the facts only he had been arrested is neither here nor there. Our conscience will not allow us to interfere

in this matter. It is a grievous crime that has been committed, even though without sufficient evidence available to the prosecution to ensure a conviction, but our conscience will not agree as we have gone through the records and are convinced that a case exist for the departmental authorities to pass Annexure-A9 order. Therefore we confirm Annexure-A9 order and hold that the OA is without merit.

3. The OA is dismissed. No order as to costs.

(C V SANKAR)
MEMBER (A)

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

/ksk/

Annexures referred to by the applicant in OA No. 170/01346/2015

Annexure A1 Copy of the memorandum dated 01.08.2001

Annexure A 2 Copy of the certificate of imprisonment dated 19.08.2013

Annexure A 3 Copy of the Hon'ble Supreme Court order dated 03.07.2013

Annexure A4 Copy of the production of document letter dated 01.09.2013

Annexure A5 Copy of the representation dated 21.10.2013

Annexure A6 Copy of the order dated 19.09.2001 passed by the 4th respondent

Annexure A7 Copy of the order dated 23.12.2013 passed by the 3rd respondent

Annexure A 8 Copy of the revision petition

Annexure A9 Copy of the order dated 15.05.2014 passed by the 2nd respondent

Annexures with reply statement

Nil

Annexures with rejoinder

Nil

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