

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Friday 7th day of December Two Thousand And Eighteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

O.A. 310/1613/2018

A.K. Karunakaran, M/54,
S/o. A. Kamalanathan,
No. 172, Big Street,
Triplicane,
Chennai- 600 025.

....Applicant

(By Advocate: M/s. R.Jaya Prakash)

Versus

1. Union of India,
Rep. by the General Manager,
Southern Railway,
Head Quarters Office,
Park Town, Chennai- 600 003;
2. The Chief Personnel Officer,
Southern Railway,
Head Quarters Office,
Park Town, Chennai- 600 003;
3. Dy. FAQ & CAO/T/MAS &
Disciplinary Authority,
Southern Railway,
Head Quarters Office,
Park Town, Chennai- 600 003;
4. SPO/Rules,
Southern Railway,
Head Quarters Office,
Park Town, Chennai- 600 003;

5. Statistics & Analysis Officer/MAS,
Statistical Branch,
10th Floor, MMC,
Southern Railway,
Head Quarters Office,
Park Town, Chennai- 600 003.

...Respondents

(By Advocate:)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard. Applicant has filed this OA seeking the following relief:-

"to call for the records pertaining to the proceedings of the 5th respondent in Proceedings No. St. 148/1/AKK dated 28.09.2018 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to treat the period of deemed suspension from 01.03.2011 to 14.03.2011 and the period from 15.3.2011 to 06.06.2011 as duty period for all purposes and to pay the consequential monetary benefits."

2. It is submitted that the applicant was placed under suspension based on a complaint filed against him alleging offences under provisions of Sections 354, 377, 506(ii) of IPC and Section 4 of Prevention of Ragging of Women Act. After investigation and Trial, the applicant was acquitted of the charges and was reinstated into service. The applicant was entitled to be paid full pay and allowances for the period of suspension as he was under suspension for no fault of his, it is contended.

3. Learned counsel for the applicant relief on the observations made by the Hon'ble Madras High Court in W.A. No. 1329 of 2000 dated 22.12.2004 on the following lines:-

"5. When a misconduct is committed by an employee, the authorities have the option to take two kinds of proceedings against him. Firstly a criminal proceeding if he is alleged to have committed a criminal offence, and in addition they can also take a departmental proceeding against him by issuing a departmental charge memo. Even if the employee is acquitted in the criminal

case, he can yet be found guilty in the departmental proceedings. This is because the standard of proof in the two proceedings is different. In criminal proceedings, 'the standard of proof' is proof beyond reasonable doubt, whereas in departmental proceedings, the standard of proof is like in a civil case i.e. balance of probabilities.

6. Hence, it was open to the school management to take both kinds of proceedings against the teacher concerned, but it did not choose to institute departmental proceedings against him or issue him any departmental charge memo. The result was that there was only one proceeding against the teacher i.e. criminal proceedings in which he has been acquitted. Once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unless expressly made retrospectively. Since the employee has been acquitted in the criminal case that judgment will operate retrospectively and it has to be deemed that the teacher concerned was never guilty of that offence. Consequently, he is entitled to his salary for the period of his unemployment and he is entitled to reinstatement. We see no infirmity in the order of the learned single Judge. The position may have been different if disciplinary proceedings had also been instituted against the respondent, but that was not done."

4. We have considered the matter. The applicant is aggrieved by the Annexure -A/17 order dated 28.09.2018 rejecting his appeal seeking such relief. It is mentioned that the applicant was placed under suspension in terms of Rule 5(2)(a) of the Railway Servants (D&A) Rules which provides that "*a Railway Servant shall be deemed to have been under suspension by an order of the competent authority w.e.f. the date of detention if the Railway Servant is detained in custody whether on a Criminal charge or otherwise for a period exceeding 48 hours.*" The applicant was kept under suspension in accordance therewith. The impugned order proceeds to state that a reading of the judgment that allegedly acquitted the applicant indicated that the applicant was discharged in terms of a compromise Memorandum and not

based on the non-happening of the incident alleged. The incident was in no way related to his official working. The applicant's suspension was in terms of the relevant rules and the acquittal was not on merits but change in the minds and compromise between the applicant and the complainant and the matter had nothing to do with the respondents. It is stated that Public money could not be wasted for the individual mistakes where there was no nexus with the official duty. Accordingly the period of suspension should not be treated as duty inspite of the fact that applicant was acquitted by the Hon'ble Court.

5. As for the revocation of suspension itself, it is stated that it was done with an intention from the day the applicant came out on bail. The respondents have also cited the judgment of the Hon'ble Supreme Court in the case of RACCHODJI CHATURJI THAKORE Vs. The Supdt. Engineer, wherein, it was observed that "It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of the statutory rules applicable the situation, the question of back wages will be considered only.....Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages." It is accordingly stated that the respondents had arrived at a conclusion that the

applicant having been suspended for his own act of commission and omissions, it would not be possible to for the government to pay the exchequers' money without any rule.

6. We have also considered the citation relied upon by the applicant. From a perusal of the order of the Hon'ble Madras High Court in the case cited supra, it would appear that the Hon'ble High Court had made the observations in relation to an employee whose alleged act of crime related to official duty where the authorities would have an option to take two kinds of proceedings against the official, one of which would be the departmental proceedings. Even if the charged officer is acquitted in the criminal case, as the standard of proof required in the two cases would be different, there could be a finding against the employee in the departmental case. However, in the case of the applicant herein it is clear that the applicant had not committed any misconduct with respect to his official duty and, therefore, the respondents would have had no evidence to proceed simultaneously in departmental proceedings.

7. Under such circumstances, we are of the view that the observations of the Hon'ble Supreme Court made in RACCHODJI CHATURJI THAKORE Vs. The Supdt. Engineer would be more relevant and applicable to this case although the said case related to termination and reinstatement and not suspension. However, rationale of "an employee disabling himself from rendering service on account of conviction and incarceration in jail is very much relevant to a case of suspension as well. As the suspension has been made in accordance with rules and even the acquittal was only in terms of a compromise, we are

in total agreement with the statement in the impugned order that public money could not be wasted for individual mistakes where there was no nexus with the official duty.

8. In view of the above, no case is made out for interference by this court. The OA is accordingly dismissed. No costs.

(P. MADHAVAN)
MEMBER (J)

(R. RAMANUJAM)
MEMBER (A)

07.12.2018

Asvs.