

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.1655 of 2014
& M.P.No.1 of 2015

- 1.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
Chennai-3.
 - 2.The Deputy Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai-3.
 - 3.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway, Madurai,
Madurai District. ... Appellants
- Vs.
- R.Mahendran ... Respondent

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 16.06.2014 made in W.P.No.41703 of 2002.

Prayer W.P.No.41703 of 2002:

Writ Petitions under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus call for the records relating to the impugned order of the 1st respondent communicated to the petitioner by the 3rd respondent in proceedings No.UXP/153/1/2001 dated 10.7.2002 confirming the orders passed by the respondents 2 and 3 in No.UXP/153/1/2001 dated 16.4.2002 and No.UXP/153/1/2001 dated 26.12.2001 quash the same and direct the Respondents to reinstate the Petitioner in service with all attendant benefits.

For Appellants : Mr.M.Vijay Anand

For respondent : Mr.P.Rajendran

JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH,J.)

This appeal has been preferred as against the order of the learned single Judge, who after going into the materials available on record, passed a detailed speaking order exonerating the respondent/writ petitioner of two charges framed against him. Consequently, an order of reinstatement with continuity of service and monetary and other attendant benefits were ordered without backwages.

2. It is stated by the learned counsel appearing for the respondent that the respondent/writ petitioner is suffering from paralysis and has got only few months to go before superannuation and would be reaching superannuation on 31.01.2019.

3. Two charges have been framed against the respondent. Charge No.1 is with respect to the unauthorised absence from 06.04.1990 to 14.04.1990. The Charge No.2 is with respect to the misappropriation of the money belonging to the Department. All the authorities have found that charges are proved. Accordingly, a punishment of dismissal from service is ordered.

4. The learned single Judge was pleased to allow the writ petition on merits. Insofar as charge No.1 is concerned, it is held that the enquiry officer not only rejected the evidence of DW1 and DW2 on the ground that they are distant relatives of the delinquent but also never considered the evidence of D.W.3, who is an independent witness. On the second charge, it has been held that though the acquittal in the criminal case per se cannot be a ground to hold that the charges are not proved except the investigation officer, before whom the confession statement was made, two other independent witnesses before whose presence recovery was made were not examined. The learned single Judge further held that the acquittal by the Criminal Court is not based on benefit of doubt, but on the detailed appreciation of evidence, finding that there is no material for conviction, which can be termed as an honourable acquittal.

5. The learned counsel appearing for the appellants submits that the decision of the Criminal Court cannot have

a bearing. The departmental enquiry has been initiated after acquittal. The decree of evidence can be different. In the case on hand, all the authorities found that the charges are proved. What is required is the preponderance of probabilities as against the proof beyond reasonable doubt. Therefore, the order of the learned single Judge would require interference, more so, when merits have been gone into.

6. The learned counsel appearing for the respondent/writ petitioner would submit that the findings of the learned single Judge cannot be assailed. These findings are with respect to the procedure adopted. There is no explanation for not considering the evidence produced by the respondent and non-production of the relevant witnesses. It is for the department to substantiate the charges, which was not done. Therefore, no interference is required.

7. We are conscious about the role of the Court. In a departmental proceedings, we are concerned with the decision making process as against a decision itself. However, in the case on hand, we have no difficulty in holding that the departmental proceedings is different from the criminal case. On the charge No.1, it is the specific case of the respondent that he was prevented from attending the work by the officials of the appellants. A case was also registered against him. To substantiate it, he examined three witnesses. Though the evidence of D.Ws.1 and 2 were disqualified on the ground that they are distant relatives of the delinquent, the evidence of independent witness, was not considered at all. As rightly held by the learned single Judge, admittedly, the onus is on the department to substantiate the charges levelled against the delinquent. In such view of the matter, the finding arrived at by the learned single Judge that the decision made is not on merit but on consideration of the material available on record cannot be interfered with.

8. Insofar as the charge No.2 is concerned, there is no explanation given for not examining the two material witnesses. P.W.5 is the Police Officer, before whom confession statement has been made under Section 25 of the Indian Evidence Act, 1872. Such a confession is an exception provided under the Act, which we are not concerned with. There is no reason given as to why the two other independent witnesses, who signed for the recovery of the misappropriated amount, were not examined. Therefore, the reasoning of the learned single Judge even on this ground cannot be faulted.

9. We also find that there is no point in remitting the matter at this point of time, even if we agree with the submissions of the learned counsel for the appellants. The respondent is likely to retire on 31.01.2019 and therefore, he cannot actively participate. The learned single Judge did not even grant backwages, but only passed an order of reinstatement. Thus, we are not inclined to interfere with the order passed by the learned single Judge and the writ appeal stands dismissed accordingly. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Moore Market Complex,
Chennai-3.
- 2.The Deputy Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai-3.
- 3.The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway, Madurai,
Madurai District.

+1cc to Mr.M.Vijay Anand , Advocate SR.No. 82531
+1cc to Mr.P.Rajendran , Advocate SR.No. 82761

W.A.No.1655 of 2014

A.SK(04/02/2019)

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