

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20th DAY OF AUGUST, 2019

PRESENT

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

AND

THE HON'BLE MR. JUSTICE R. DEVDAS

WRIT PETITION NO.981/2019 (S-CAT)

BETWEEN:

1. UNION OF INDIA
REPRESENTED BY CHAIRMAN
SOUTHERN RAILWAY,
HEAD QUARTER OFFICE,
SOUTHERN RAILWAY,
PARK TOWN POST,
CHENNAI
TAMILNADU - 600 003.
2. THE SENIOR DIVISIONAL COMMERCIAL MANAGER
COMMERCIAL BRANCH,
SOUTHERN RAILWAY,
PARK TOWN POST,
CHENNAI
TAMILNADU - 600 003.
3. THE SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY
PARK TOWN POST,
CHENNAI
TAMILNADU - 600 003.
4. DIRECTOR E (W & D & A)

RAILWAY BOARD
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
NEW DELHI - 100 001.

... PETITIONERS

(BY SRI.ABHINAY Y.T., ADV.)

AND:

K.L. MICHEAL
SON OF LATE K.P.LOGANATHAN
AGED ABOUT 64 YEARS
RETIRED AS CTI,
NO.34, RANGAPPA GARDEN,
1ST CROSS, EJIPURA MAIN ROAD,
VIVEKNAGAR POST
BENGALURU - 560 047.

... RESPONDENT

(BY SRI.VENKATESH KUMAR B.S., ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD:10.10.2018 PASSED IN OA NO.250 OF 2017 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU [ANNEXURE-D] AND CONSEQUENTIALLY DISMISS THE APPLICATION IN ITS ENTIRETY.

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, **NARAYANA SWAMY J**, MADE THE FOLLOWING:

ORDER

The petitioner-Railway Authority has issued Articles of Charge alleging that the respondent-employee has contracted

the second marriage during the subsistence of first marriage. The Enquiry Officer has gone into and submitted a report to the extent that the respondent has committed an act of bigamy during the subsistence of the first marriage. Upon considering the enquiry report, the Authority has imposed a punishment of reduction of pension by 50% for a period of five years. The same was challenged before the Central Administrative Tribunal and the Tribunal by its order dated 10th October 2018 passed in Original Application No.170/00250/2017 has quashed the order of punishment. Against the same, this appeal is preferred by the employer-Railway.

2. The grounds taken by the petitioner-Authority is that under Rules 9 of Railway (Services) Pension Rules, 1993 and Rule 21 of Railway Services (Conduct) Rules, 1966 an enquiry was initiated against the respondent for the misconduct of getting married for the second time during the subsistence of his first marriage; and when the provisions permit, rightly an enquiry was initiated and the Enquiry Officer has given fullest opportunity to the respondent and imposed the punishment of

reduction of pension to 50% for a period of five years since the respondent has retired from service on attaining superannuation. The learned counsel for the petitioners submits that this aspect has not been considered by the Tribunal. Though the Tribunal has made a discussion to the extent that the respondent has committed an act of bigamy and when things are not disputed even by the respondent himself, setting aside the punishment order is contrary to principles of law and on this ground he prays that the order of the Tribunal is required to be set aside.

3. The learned counsel for the respondent supports the order of the Tribunal and submits that as the first wife has eloped, the respondent has waited for about seven years and presumed that she had died, thereafter, entered into with the second marriage and there is no error committed by the Tribunal.

4. Heard the learned counsel for the parties. Admitted facts need not be proved. Respondent has admitted that he has got married with V. Dhanamary on the ground that the first wife Suguna left seven years ago and it was presumed that she died.

This admission itself is sufficient. When such being the case, it is to be held that the respondent has committed an act of misconduct. But, the petitioner-Authority in order to provide a reasonable opportunity to the respondent and in compliance of natural justice, framed Articles of charge and appointed an Inquiry officer to go into the matter. There is no scope for presumption that wife would be dead, in case if she is not seen for about seven years. For the purpose of the said presumption the law provides that the husband has to approach the Civil Court seeking declaration that his wife is dead. Instead of approaching the Civil Court and obtaining decree, the respondent has presumed that she must have died and had contracted the second marriage, which on the face of it is a misconduct. Under these circumstances, the order of the Tribunal is to be set aside since the reason assigned is contrary to law and fact.

5. The learned counsel for the respondent submits that the respondent had retired from service and he is surviving on pension and hence the punishment would affect his livelihood. The Hon'ble Supreme Court has held that interference with the

enquiry report and punishment is not for the Courts. Though we are fully cautious on the judgment of the Hon'ble Supreme Court, but in the facts and circumstances of the case that the respondent has already retired from service, and he is surviving only on pension, if it is deprived, it is nothing but deprivation of a livelihood of a person. If the punishment was imposed upon the respondent during the period of his service, that would have been a different thing. But since he is already retired, normally, he would be completely dependent upon the pension and if there is a further reduction in the same, it would be difficult for any pensioner to eke his livelihood. Under the circumstance, though we confirm the finding of the enquiry officer and the order of punishment, but the only interference to be is with regard to the reduction of period from five years to three years. Hence, we pass the following:

ORDER

1. The order dated 10th October, 2018 passed in Original Application No.170/00250/2017 by the Central Administrative Tribunal, Bangalore

Bench is modified by reducing the period of 50% reduction in pension from five years to three years.

2. As the Respondent has already completed three years, the respondent is entitled for complete pensionary benefits.
3. Time for compliance is two months from the date of receipt of a certified copy of this order.

Petition is accordingly disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Inn