

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.561 OF 2013**


Shri Narendra Ramdas Borase. )  
Occu. : Nil, Ex-Assistant Engineer )  
Grade-II, R/o. C/o. Smt. A.S. Gaikwad, )  
Railway Men's C.H.S. 19B, Sector No.II, )  
Near Natraj Theatre, Vashi, )  
Navi Mumbai 400 703. )  
Address of Service of Notice : )  
Shri A.V. Bandiwadekar, Advocate, )  
Having Office at 9, "Ram-Krishna", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through the Principal Secretary, )  
Water Resources Department, )  
{Erstwhile Irrigation Department}, )  
Mantralaya, Mumbai - 400 032. )...**Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondent.**

  
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**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 05.01.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. This Original Application (OA) under Section 19 of the Administrative Tribunals Act (Act hereinafter) is made by a dismissed Assistant Engineer, Grade-II which order of dismissal was made consequent to his conviction on the allegations falling within the purview of the penal offence under Section 498-A, 304(B) and 306 of the Indian Penal Code. That order of dismissal was made on 23<sup>rd</sup> September, 1997 and confirmed in administrative appeal and review thereafter. All these three orders are being impugned herein.

2. The Applicant was serving as Assistant Engineer, Grade-II when on 17.7.1994, he got involved in a criminal case registered vide Cr.No.296/1994 at Azad Nagar Police Station, Navi Mumbai. It is clear from the record that his wife – late Smt. Vidya Borse met with unnatural death and the above referred offence under Sections 304(B), 306 and 498-A read with Section 34 was registered on 17.9.1994. His parents were also co-accused with him. On 17.9.1994,



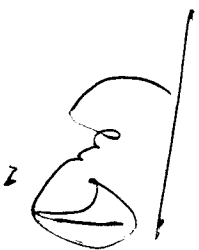
he was placed under suspension. The Applicant was tried by the Court of Sessions, Dhule vide Sessions Case No.62/1995. The allegations as already pointed out inter-alia were that the fatal burn injuries were ascribable to the criminal act of the Applicant and his parents. That was Sessions Case No.62/1995 by an order dated 31.7.1995, the Sessions Court held the Applicant and his mother guilty of the offence punishable under the above referred penal provisions. The Applicant was sentenced to rigorous imprisonment for two years and a fine of Rs.5,000/- and there must have been a default clause which aspect of the matter is not quite germane hereto.

3. The Applicant preferred **Criminal Appeal No.434/1995 (Shri Narendra R. Borase and Sau. Shakuntalabai R. Borase Vs. The State of Maharashtra)**. The State also preferred an appeal being **Criminal Appeal No.575/1995 (The State of Maharashtra V/s. Narendra R. Borase and 2 others)**. The other Appellant was the mother of the Applicant. There was another criminal appeal for enhancement of sentence being **Criminal Appeal No.576/1995 (State of Maharashtra Vs. Narendra R. Borase and one another)**. That another was the mother of the present Applicant who it would appear was the third accused before the Court of Sessions and she

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was also convicted and sentenced. All these 3 appeals came to be heard by a Division Bench of the Hon'ble Bombay High Court and was decided on 10<sup>th</sup> August, 1999 by a common judgment and order.

4. We have very carefully perused the judgment of the Hon'ble High Court above referred to with particular reference to Paras 54, 67 and other paragraphs. Their Lordships held inter-alia that it was clearly established that the Applicant for all practical purposes treated his deceased wife as an object to screw out money. Although Their Lordships did not approve of the words "money making machine", but it was held that in effect, the Applicant was guilty of the same heinous act. The Applicant was, therefore, convicted under Section 498-A and also under Section 304(B) and was sentenced to rigorous imprisonment for seven years under each one of them with direction that both the sentences would run concurrently. Time of 8 weeks was granted to the Applicant to surrender. His appeal came to be dismissed and in fact, the appeal seeking enhancement of sentence was also dismissed. The Applicant's mother, however, came to be acquitted and her appeal was allowed.

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5. The matter was carried by **Criminal Appeal No.106/2000 to the Hon'ble Supreme Court (Narendra R. Borase Vs. The State of Maharashtra)**. The Hon'ble Supreme Court was pleased to observe *inter-alia* that the evidence against the Applicant was in the form of 5 express dying declarations and one oral dying declaration that the deceased made to her father. It was observed that the Trial Court rightly did not rely upon the dying declarations and to that extent, Their Lordships of the Hon'ble Supreme Court did not accept the view of the Hon'ble High Court and that being the state of affairs, the conviction under Section 306 of the Indian Penal Code could not stand. However, as far as the other aspect of the matter was concerned, Their Lordships of the Hon'ble Supreme Court were pleased to make the following observations.


“So far as the conviction under Section 498A/34 I.P.C. is concerned, we do not find any infirmity therein. However, in the facts and circumstances of the case, as it has been stated that the appellant has remained in custody for a period of four months, we think it would be just and expedient to reduce the sentence already undergone.

Accordingly, the appeal is allowed in-part, conviction and sentence awarded against the appellant under Section 304B I.P.C. are set aside and he is acquitted of this charge. So far as the conviction under Section 498A of I.P.C. is



concerned, the same is confirmed, but the sentence of imprisonment awarded against him is reduced to the period already undergone. The appellant, who is on bail, is discharged from the liability of bail bonds.”

6. It becomes very clear from the above extract that the Hon'ble Supreme Court did not find any infirmity in the judgment appealed against in so far as the conviction of the Applicant under Section 498-A was concerned. It was only in so far as the quantum of sentence was concerned that a lenient view was taken and the period already undergone pending first orders of the Hon'ble Supreme Court was treated as sufficient sentence. That does not in our opinion, derogate against the conclusion that easily flows out that the Applicant is a convict and that too, of an offence under Section 498-A of the Indian Penal Code which from the current trend of judicial thinking based on the common knowledge of the social milieu has in it a Clear element of moral turpitude. We do not think, there can be any quarrel within this proposition. The culpability of the Applicant having been held by the Hon'ble Apex Court has its effect and fall out which is what we have mentioned just now. It cannot be anybody's case that any disciplinary authority or any judicial authority charged with the powers and the duty to make a judicial review of administrative action can revisit the finding with

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regard to the guilt in so far as the Applicant is concerned. It is, therefore, very clear that the Applicant is a convict and he has also suffered imprisonment for an offence involving moral turpitude.

7. It is not really necessary for us to closely read the impugned orders herein. They proceed on the basis of the facts mentioned above. By no stretch of imagination, can they be assailed of suffering from any vice which vitiates them. The whole thing is writ large on the record and it is not in our view open to us to interfere therewith just for the asking. We have to be conscious of the jurisdictional limitations that this Tribunal has in dealing with the matters such as this one.

8. The Applicant has elaborately set out grounds which referred to his own academic achievements, etc. and sought to raise question-mark about the procedure followed by the disciplinary authorities. He also refers to certain G.Rs in the field and points out that the authorities ought to have read the orders of the Courts to draw their own conclusions about the culpability of the Applicant in the context of punishment in the disciplinary proceedings. According to him, they did not do so, and therefore, the impugned orders are unsustainable. This was the gist of

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Mr. Bandiwadekar's submission as well, which came to be stoutly resisted by Smt. K.S. Gaikwad, the learned P.O.

9. In so far as Mr. Bandiwadekar's reliance on **State of Madhya Pradesh Vs. Hazarilal (2008) 1 SCC (L & S) (611)**, it was basically and mainly on the ground that in making a decision about the punishment, now the harp must be on the doctrine of proportionality rather than unreasonableness. In fact, applying the very same principles laid down by the Hon'ble Apex Court to the present facts, it is very clear that the only punishment that the facts warranted was imposed on the Applicant. For the same reason, we do not find as apposite, reliance on an earlier judgment of this Tribunal in **OA 633/2001 with OA 281/2001 (Shri Mahadeo D. Patil Vs. The State of Maharashtra and another, dt.21.03.2003)**.

10. We have no hesitation at all in out rightly rejecting the case of the Applicant. After-all, we are not on any academic mission. On hard facts, it is already found that the Applicant was finally held to be guilty of having committed an offence of moral turpitude, and therefore, there is no scope for interference with the impugned orders. In that view of the matter, therefore, we find no





merit in this OA and the same is accordingly dismissed with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**05.01.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**05.01.2016**

Mumbai

Date : 05.01.2016

Dictation taken by :

S.K. Wamanse.

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