

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.265/2020 with MA No.254/2020

This the 03rd day of September, 2020

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Kavita Ben Dayalbhai Tahiliyani
Inspector of Income Tax
(Under the order of dismissal)
Female. Age : 75 years,
Residing at : C/o. Girish Tahiliyani
A-104, Unique Essenza,
Opp. Kargil Petrol Pump, Sola,
Ahmedabad 380 061. Applicant.

(By Advocate : Shri N.S.Kariel)

VERSUS

1. Union of India
(Notice to be served through
The Secretary
Ministry of Finance, Department of Revenue
North Block, New Delhi 110 001.
2. Central Board of Direct Tax
(Notice to be served through
The Chairman, CBDT
North Block, New Delhi 110 001.
3. Principal Commissioner of Income Tax
Office of the Principal Chief Commissioner of Income Tax
Gujarat Region,
2nd Floor, Aaykar Bhavan,
Ashram Road, Opp. All India Radio
Ahmedabad 380 009.
4. Chief Commissioner of Income Tax
1st Floor, Aaykar Bhavan, Annexe Building, Race Course Circle,
Vadodara 390 007.
5. The Commissioner of Income Tax- IV
2nd Floor, Old G.E.B Building
Race Course Circle,
Vadodara 390 007. Respondents

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

In the instant OA, Shri N.S.Kariel, counsel for the applicant submits that vide impugned order dated 29.07.2004, the respondent No.5 had dismissed the applicant as per Rule 19 (2) of CCS (CCA) Rules, while she was working as Inspector mainly on the ground that the Special Judge, CBI, Ahmedabad vide its Judgment dated 30.7.2002 convicted her for offence under Section 13(2) of the Prevention of Corruption Act. (Annexure A-1).

2. The applicant has challenged the said conviction order before the Hon'ble High Court of Gujarat in R/Criminal Appeal No.689/2002, which was finally allowed vide judgment dated 18-19th September, 2018 whereby conviction order was set aside and the applicant was acquitted of the charges leveled against her. In the meantime, the applicant attained the age of superannuation. Therefore, she has submitted representation before the respondent No.5 and requested that since the Hon'ble High Court vide its Judgment dated 18-19.9.2018, acquitted the applicant from the criminal charges leveled against her, in the light of the said Judgment, she became entitled for all consequential benefits including the retiral benefits. However, the said representation remained unanswered. Thereafter, the applicant had approached this Tribunal vide OA No.384/2019. The said OA was dismissed mainly on the ground that

the applicant had not challenged the order of dismissal passed by the disciplinary authority. Thereafter, the applicant has filed R/SCA No.1814/2020 before the Hon'ble High Court and vide order dated 27.01.2020, the applicant was granted liberty to withdraw the said SCA with a view to take out appropriate proceedings before this Tribunal incorporating the prayers as required (Annexure A-6).

3. Counsel for the applicant submits that the punishment of dismissal from the service imposed upon the applicant has become non-est in the light of the Judgment passed by the Hon'ble High Court in R/SCA No.689/2002 dated 18-19 September, 2018.

4. Learned counsel placed reliance on the Judgment passed by the Hon'ble Apex Court in the case of Basanti Prasad V/s. Bihar School Examination Board, reported in (2009) 6 SCC 791, and it is submitted that when conviction is the sole ground for dismissal of the employee without resorting to a departmental inquiry, then upon his/her acquittal, the delinquent officer is required to be granted all benefits as may be accruing upon her. In the present case, the applicant is now aged 75 years, and therefore, the respondents ought to have reviewed their order of dismissal and have granted all consequential benefits accrued to the applicant.

5. Learned counsel vehemently submitted that though the copy of judgment passed by Hon'ble High Court in Criminal Appeal No.689/2002 along with the representation had been submitted

before the competent authority, till date the respondents had not granted legitimate service benefits including retiral benefits to the applicant. After arguing for some time, learned counsel further submits that the applicant will be satisfied, if she may be permitted to submit additional representation before the competent authority to request for reviewing of her dismissal order in the light of the order passed by the Hon'ble High Court, as referred hereinabove and appropriate direction be issued to the respondents for expeditious consideration of her earlier representation as also additional representation.

6. Heard the counsel for the applicant. We have perused the materials on record.

7. In the present case, it is noticed that the dismissal order dated 29.7.2004 passed by the respondents was solely based on the order of conviction passed by the Special Judge, Ahmedabad and the said order of conviction has been set aside by the Hon'ble High Court of Gujarat in Criminal Appeal No.689/2002 decided on 18-19 September, 2018. Consequently, the order of dismissal of the employee/ delinquent official in absence of the disciplinary inquiry/ departmental proceeding does not survive. Therefore, in our considered view, we deem it fit to dispose of this OA by accepting the submissions of the counsel for the applicant to allow the applicant to file additional representation. Considering the age of the applicant, the

applicant is directed to submit additional representation for review/cancellation of her dismissal order dated 29.7.2004 (Annexure A-1) and claim for consequential benefits/ retiral benefits within two weeks from today. Further, on receipt of additional representation of the applicant, the respondents are directed to consider the representation of the applicant within forty-five days by taking into consideration the judgment passed by the Hon'ble High Court in Criminal Appeal No.689/2002 dated 18-19 September, 2018 and take appropriate decision with intimation to the applicant in accordance with the rules.

8. With the above direction, the OA stands disposed of. In view of the disposal of the OA, the MA No.254/2020 also stands disposed of. No order as to costs.

9. Registry is directed to send a copy of this order to the counsel for the applicant through email and the applicant is at liberty to serve copy of this order to the respondents through Speed post as also through email.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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