

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

DA 2531 OF 1990

New Delhi this the 5th day of December 1994.

Hon'ble Mr. J. P. Sharma, Member (J)  
Hon'ble Mr. S.R. Adiga, Member (A)

Shri Vinod Kumar Khilnay  
S/o Shri K.S. Khilnay  
R/o H-4/3 Malaviya Nagar  
New Delhi 110 017  
(Name)

....Applicant

Versus

1. Delhi Administration  
Through Chief Secretary  
5, Sham Nath Marg, Delhi-54
2. The Commissioner, Food & Supplies  
2, Under Hill Road, Delhi-54.  
(Name)

...Respondents

JUDGEMENT (Oral)

Hon'ble Mr. J. P. Sharma, Member (J)

The applicant was involved in a criminal case under Section 5 (2) of the Prevention of Corruption Act read with Sec. 161 of the Indian Penal Code and was convicted by the judgement dated 6.12.1977 passed by Shri D.C. Aggarwal, Special Judge, Delhi for R.I. for one year alongwith a fine of Rs. 500/-. The respondents by the order dated 3.3.1978 under Rule 19(1) of CCS (CCA) Rules 1965 dismissed the applicant from service with immediate effect. The applicant was given subsistence allowance upto the period of 2nd March 1978, on account of the order of dismissal dated 3rd March 1978. The applicant also

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filed a revision petition to the Lt. Governor of Delhi which was also dismissed.

2. The applicant filed this application on 30th Nov. 1990 and assailed the order dated 6.12.89 by which revision of the applicant was dismissed against the order dated 4.1.89 and holding that the order of dismissal is final and that the appellant is not entitled to subsistence allowance. The dismissal order dated 3.3.1978 has also been challenged in the present application.

3. The relief prayed for by the applicant is that the order of dismissal passed by the disciplinary authority and the order passed by Secretary( Services), Delhi Administration, as well as Lt. Governor of Delhi are illegal, arbitrary and unwarranted and be set aside. The applicant be given subsistence allowance at the rate admissible under Fundamental Rules 53 w.e.f. 3.3.78. The respondents contested this application and opposed the grant of relief saying that the applicant has been dismissed from service on account of conviction by a criminal court and his case can only be reviewed in the light of his final acquittal by the High Court, quashing his conviction passed by the sub-judge by the order dated 6.12.1989. The applicant has also filed a rejoinder, reiterating the fact the action of the respondents is unfair, arbitrary and in similar other cases, when appeal is pending for final disposal before the higher authorities against a conviction, subsistence allowance has been granted.

4. None is present on behalf of the applicant. The respondents are not represented either. This is an old case. It has been on board and today it has come up for final hearing. We find that

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the applicant has since been removed from the service by order of dismissal. The dismissal order passed in his case cannot be judicially reviewed unless his conviction passed by sub-judge dated 6.12.89 is quashed. It would have been another matter if the respondents, in view of the Govt. of India's decision, would have waited for the decision of the High Court against the conviction. The same has not been done by the respondents, and the case being of corruption in the professional career of the applicant, his services have been dispensed with under the statutory provisions under Rule 19(i) of the CGS(CCA) Rules 1965.

5. We make it clear that the moment the applicant gets relief against the order of conviction, he can file a representation before competent authority and the competent authority in their reply have also mentioned that the case can be considered after <sup>his</sup> acquittal by the High Court, as an appeal.

6. We are not aware of the actual position existing at present. Four years have passed after the application has been filed and the appeal against conviction had been filed sometime in the year 1978. The result of the appeal must have been out by now and it is not known <sup>his</sup> may be because of non-appearance on behalf of the applicant.

7. The application therefore, is dismissed as devoid of merits leaving the parties to bear their own costs. The applicant will be free to make a representation after his acquittal by the High Court of the charge of corruption under Section 5 (2) of the Prevention of Corruption Act.

*Infolge*  
(S.R.ADIGE)  
MEMBER(A)

*Arsham*  
(J.P.SHARMA)  
MEMBER(J)