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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

R.A.No.48/95

in

O.A.No.2531/90

New Delhi : March 24th, 1995.

HON'BLE MR. J.P.SHARMA, MEMBER (J)

HON'BLE MR. S.R.ADIGE, MEMBER (A).

Sh. Vinod Kumar Khilnaney,
s/o Shri K.S.Khilnaney,
r/o H-4/3 Malaviya Nagar,
New Delhi-110 017

.....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. Respondents.

ORDER (BY CIRCULATION)

By Hon'ble Mr. S.R.Adige, Member (A)

In this review application bearing No.48 of 1995 Shri V.K.Khilnaney has prayed for review of the judgment dated 9.12.94 in O.A.No.2531/90 Shri V.K.Khilnaney Vs. Delhi Administration & another.

2. The applicant was involved in a criminal case under section 5(2) of the Prevention of Corruption Act read with Section 161 IPC and was convicted by judgment dated 6.12.77 passed by the Special Judge, Delhi for one year's R.I. with a fine of Rs.500/-. The respondents by order dated 3.3.78 under Rule 19(i) CCS (CCA) Rules dismissed the applicant from service with immediate effect. The applicant was paid subsistence allowance upto 2.3.78. He filed an appeal petition before the Chief Secretary, Delhi which was rejected on

/An/

4.1.89 and his revision petition before the L.G. Delhi was likewise rejected on 6.12.89. By O.A. No.2531/90, the applicant challenged the dismissal order as well as appeal and revisionary order, and also challenged the action of the respondents in discontinuing his subsistence allowance w.e.f.

2.3.78 .The O.A. came up for hearing on 9.12.94 , None appeared for the applicant or for the respondents! On the basis of the materials on record, we found no substance in the contention of the applicant that he was entitled to subsistence allowance, till Delhi his appeal against his conviction in the High Court was finally decided, and the O.A. was accordingly dismissed leaving it open to make a representation if and when he secured acquittal from the High Court in his appeal against his conviction!

3.. In this R.A., it has been contended that the applicant's counsel was not well and he could not appear when the case was called on 9.12.94 . It has been urged that in the case of Ramesh Kumar vs. Delhi Administration -II 1990 ATLT (CAT) 61, it has been held that a Civil servant is entitled to subsistence allowance even after conviction till decision of his appeal (copy of judgment at Annexure-A). It also appears that a SLP No.8884/90 was filed against that judgment in the Hon'ble Supreme Court, whereby the operation of the said judgment in Ramesh Kumar's case (Supra) has been stayed, vide Hon'ble Supreme Court's orders dated 20.12.90 which were further extended vide their order dated 25.3.91.

4 . In the R.A., it has been prayed that the matter be adjourned till the judgment in Ramesh Kumar's

case (Supra) is delivered by the Hon'ble Supreme Court; otherwise there will be a conflict of judgment on similar question of fact and law. Recital of the above facts makes it clear that the Hon'ble Supreme Court had been pleased to stay the Tribunal's judgment in Ramesh Kumar's case (Supra) wherein it was held that a civil servant was entitled to subsistence allowance even after his dismissal, upon being convicted in a criminal case till the decision in the appeal. In our judgment dated 9.12.94 also we have taken the view that the applicant's dismissal was final and his case could not judicially reviewed unless his conviction was subsequently set aside in the appeal. In our judgment, we have ~~specifically~~ left it open to the applicant to make a fresh representation, if so advised if and when he secured an acquittal against his conviction upon his appeal before the Delhi High Court. It will likewise be open to him to file a fresh representation for continuance of subsistence allowance if the Hon'ble Supreme Court eventually upholds the Tribunal's judgment in Ramesh Kumar's case (Supra).

5. In view of what has been stated above, we see no reason to review our judgment dated 9.12.94, more particularly as the grounds taken in the review petition do not bring it within the scope and ambit of Order 47 Rule 1 CPC.

6. Under the circumstances, this review petition is dismissed.

Arif Ali
(S. R. ADIGE)
MEMBER (A)

J. P. Sharma
(J. P. SHARMA)
MEMBER (J)