

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

T.A. 1071/86(T)
(O. Suit No. 745/1984)

Uma Narain Dwivedi

Applicant/petitioner

versus

Employees' State Insurance Corpn.
and others.

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was working as U.D.C. Cashier (Teller) in the Employees State Insurance Corporation on 21.10.76 at Regional office Kanpur, was suspended/on a criminal charge pending against him under section 161/120B I.P.C. and Section 5(2) read with section 5(1)(d) of prevention of Corruption Act. On representations of the plaintiff the suspension order was revoked but the Sessions Judge vide his order dated 30.11.1977 convicted him for 6 months Rigorous Imprisonment holding that the charge of receiving Rs 10/- as illegal gratification against him has been proved. The applicant/plaintiff filed appeal before the High Court which was dismissed, whereafter he approached Supreme Court in the year 1983 which reduced the conviction of the plaintiff from 6 months R.I. to 14 days i.e. the period during which he had already been in Jail. The Regional Director vide letter dated 13.1.78 informed the plaintiff that a disciplinary proceedings are contemplated against him but the applicant did not appear in the same. Vide order dated 20.2.1978 the applicant has been dismissed from service.

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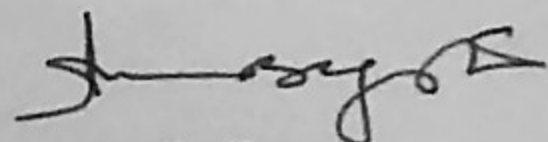
2. According to the applicant, no enquiry whatsoever was held and he was not given any opportunity by the disciplinary authority before passing the order. The appeal filed by the applicant against the dismissal order was dismissed by the Director General Vigilance on 30.8.78. The making of representations against his conviction and for getting him back in duty failed and ultimately the applicant approached this Court claiming relief against dismissal order.

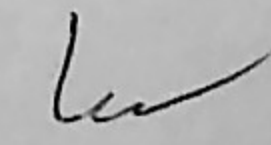
3. The respondents have resisted the claim of the applicant pleading that disciplinary proceedings against the applicant were held but the applicant did not participate, with the result ex parte dismissal order was passed. In view of the fact that the appeal had already been dismissed by the Director General, the question of payment of salary or taking him back in service does not arise.

4. The learned counsel for the applicant contended that after modification of the conviction which was reduced to the period during which the applicant had been initially in jail by the Supreme court, the gravity of the offence ought to have been considered by the Department. The departmental authorities maintained the earlier order notwithstanding the order of the Supreme Court. In this connection the learned counsel for the applicant made a reference to the case of Union of India vs. Tulsiram Patel (AIR 1985 Supreme Court 1416) which provides that if the disciplinary authority comes to know that a government servant has been convicted on the criminal charge, ^{he} which must consider whether his conduct which has led to the conviction warrants imposition of penalty for that purpose.
.....The conviction on criminal charge does not automatically entail dismissal or removal of government

servant and therefore.....

5. In the instant case it appears that while the applicant was convicted during the pendency of the appeal the disciplinary authority passed the order without considering the gravity of the offence and the order of the Supreme Court reducing the punishment to 14 days, the disciplinary authority was obliged to consider the gravity of offence, as to what punishment should be given in the circumstances, but the disciplinary authority failed to do so. Accordingly, the respondents are directed to consider and go through the judgment of Hon. Supreme Court and consider that in the circumstances, what punishment should be given to the applicant. If the departmental authorities/respondents come to the conclusion that it is not a case of such a nature in which dismissal or removal is to be given they may give the applicant any other penalty which may cater for the purpose and to meet the ends of justice may be awarded. The decision will be taken within a period of two months from the date of receipt of a copy of this judgment. If any other penalty is imposed obviously it will be deemed that the dismissal order dated 20.2.78 has been quashed. No order as to costs.


A.M.


V. C.

Shakeel/

Allahabad Dated: 11.9.91