

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH

ALLAHABAD

Dated: This the 26th day of December, 1996

Hon'ble Mr. T. L. Verma JM
CORAM :

Hon'ble Mr. S. Dayal AM

ORIGINAL APPLICATION NO. 1567/94

C/A Shrin N. K. Nair

Shri M.K.Upadhyay

VERSUS

1. Union of India, through the Secretary,
Ministry of Communications,
Govt. of India, Sanchar Bhawan,
New Delhi.
2. Director of Telecom, U.P. Circle,
Lucknow.
3. General Manager, Telecom, Kanpur.
4. Chief General Manager, Telecom
U.P. Circle, Lucknow. - - - - - Respondents

ORDER

By Hon'ble Mr. T. L. Verma JM

The applicant, in this application filed under section 19 of the Administrative Tribunals Act 1985, seeks a direction to the respondents to reinstate the applicant on the post of Repeater Station Assistant with all consequential benefits.

2. The facts giving rise to this application briefly stated are that the applicant, while working as Repeater Station Assistant under Assistant Engineer Carrier, Telecon exchange, Kanpur was involved in a criminal case and was arrested in connection thereof. He was put under suspension with effect from 2.3.1974 pending criminal trial. Sessions Judge, Kanpur by his judgement and order dated 26.11.1977 convicted the applicant under section 302 I.P.C. read with section 120-B (I.P.C.) and sentenced him imprisonment for life. The applicant was, on his conviction in the criminal case, dismissed from service by order dated 7.10.1978 on the ground that his conduct, which led to his conviction was such that he was not fit for being retained in public service. The applicant preferred an appeal against his conviction in the High court of Judicature at Allahabad. High court has allowed the said appeal and acquitted the applicant by judgement and order dated 4.5.1993. The applicant, thereafter, submitted a representation on 1.6.1993 alongwith copy of the certified copy of the judgment of the High court to the General Manager, Telecom, U.P.Circle, Kanpur to reinstate him in service and give him all monetary benefits alongwith arrears of pay. The applicant,

thereafter submitted another representation dated 28.7.93 to the Chief General Manager, Telecom, U.P.Circle Lucknow with the same prayer. Although more than 13 months had elapsed on the date of filing this application, respondents did not pass any order on the representation filed by the applicant. Hence this application for the reliefs mentioned above.

3. The respondents have appeared and contested the claim of the applicant. In the Counter affidavit filed on behalf of the respondents, it has been stated that the representation submitted by the applicant is in active consideration before the competent authority and that the applicant has filed this application without waiting for the reply of the competent authority. Therefore, present petition is liable to be dismissed on this ground alone.

4. We have heard the learned counsels for the parties and perused the records.

5. In the instant case, admittedly no departmental enquiry was held against the applicant nor he was removed or dismissed from service as a result of the departmental enquiry. Admittedly he was removed from service on the ground that his conduct leading to his conviction was such that it was not desirable to retain him in service in public interest. The fact that the applicant had been acquitted in the said criminal case by the High court is not in dispute. Ordinarily, the respondents would have reinstated the applicant in service being informed of his acquittal by the High court. Unfortunately neither the applicant nor the respondents have brought the judgment of the High court on record. We are, therefore, not in a position to know whether the applicant has been given benefit of



doubt or he has earned a clear acquittal. From the averments made in the O. A., which have not been controverted by the respondents in the C. A., copy of the judgment of the High court has been annexed with the representation submitted by the applicant for his reinstatement in service. The respondents were, therefore, in a position to ascertain the above fact and pass appropriate order on the representation submitted by the applicant. F. R. 54 (2) provides that :-

"Where the authority competent to order reinstatement is of opinion that the government servant, who had been dismissed, removed or ^{or} compulsorily retired has been fully exonerated, the government servant shall, subject to the provisions of sub-rule (6) be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

The provision of F. R. 54(2) extracted above makes it absolutely clear that in the event that the applicant is found to be fully exonerated of the charges for which he was convicted, he is to be reinstated with ~~the~~ all financial benefits. As the copy of the judgment is not before us, we are, ~~therefore~~, not in a position to say that the applicant ~~has~~ been fully exonerated by the High court of the charges levelled against him or not. The respondents, who ~~were~~ in ^{the matter could have} seisin ^{could} pass an appropriate order on the representation submitted by the

applicant, enclosing copy of the judgment of the High court.

6- In the result, we allow this application in part and direct the respondents to pass appropriate order on the representation submitted by the applicant. In case the applicant has been fully exonerated of the charges levelled against him, he shall be reinstated in ~~the~~ service. He will also be entitled to pay and allowances in terms of F.R. 54 (2). This direction shall be complied with within three months from the date of communication of this order. Parties shall bear their own costs.


A.M.


J.M.

SOI