

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

original Application No. 1199 of 1994.

this the 27th day of February' 2001.

HON'BLE MR. S.K.I. NAQVI, MEMBER(J)
HON'BLE MR. S.A.T. RIZVI, MEMBER(A)

Radhey Shyam Shiromani, S/o late Bankey Lal Shiromani, R/o Village & Post Bijori, District Etah, working as LDC in the local office of ESI Corporation, Navyug Market, Ghaziabad.

... Applicant.

By Advocate : Sri R.D. Agrawal

Versus.

Union of India through ESI Corporation through Director General, Establishment Branch, Kotla Road, New Delhi.

2. Regional Director ESI, Corporation, Sarvodaya Nagar, Kanpur.

3. Manager, ESI Corporation, Navyug Market, local office, Ghaziabad.

... Respondents.

By Advocate : Sri B.N. Asthana.

ORDER (ORAL)

S.K.I. NAQVI, MEMBER(J)

The applicant has come-up seeking the relief to the effect that the order dated 18.9.1991 be set-aside and he be given all the consequential benefits.

2. Briefly stated, the facts of the case are that while the applicant was working as LDC in the respondents establishment, he was arrested while accepting bribe of Rs. 250/- for which he was proceeded with departmentally as well as by the police under section 5 of the Prevention of Corruption Act. As a result of criminal trial, the applicant was convicted and sentenced on 18.9.1991. Consequently thereto, the departmental proceedings were dropped at enquiry stage

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and the impugned order was passed under clause 6(1) of the III Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. The applicant had approached the Hon'ble High Court, where some interim relief was provided to him, but the Writ petition was finally dismissed on the ground of jurisdiction and, therefore, he has come-up through this O.A.

3. The respondents have contested the case of the applicant and have filed the Counter reply and also pleaded to support of the impugned order.

4. Heard the learned counsel for the rival contesting parties and have perused the pleadings on record.

5. The main contention from the side of the applicant is that once the departmental enquiry started, ^{it} they must have been ^{finalised with} ~~put to come a~~ logical conclusion and secondly that the conviction order is under appeal before the Hon'ble High Court and till the decision of the appeal, the applicant should not have been terminated, from service.

6. Considered the arguments placed ^{from} ~~before~~ the either side. So far as the first contention regarding departmental proceedings is concerned, clause (6) of the III Schedule, as referred above, is clear and the Director General has been given discretionary power to drop the proceedings, which has been exercised by him in the present case.

7. So far as the pendency of the appeal and suspension of sentenced ^{is} ~~are~~ concerned, the Hon'ble ^{High} ~~Supreme~~ Court has only suspended the sentence and not the conviction. This position has been examined at length in a case of Union of India & Others Vs. Sri Ramesh Kumar (JT 1997 (7) S.C. 645). The ratio of which runs is under :-

" A bare reading of Rule 19 shows that the Disciplinary Authority is empowered to take action against a Govt. servant on the ground of mis-conduct which has led to his conviction on a criminal charge. The rules, however, do not provide that

on suspension of execution of sentence by the Appellate Court, the order of dismissal based on conviction, stands obliterated and dismissed Govt. servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the Appellate Court filed by a Govt. servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its string merely because a criminal appeal was filed by the respondent against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the respondent on bail ----."

8. From the above, we find no merit in the case of the applicant. The O.A. is dismissed accordingly. No order as to costs.

S. K. Teller

MEMBER (A)

S. C. R. Agni

MEMBER (J)

ALLAHABAD: DATED: 27.2.2001.
GIRISH/-