

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 26th day of April 1999.

Original Application no. 653 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member
Hon'ble Mr. S.L. Jain, Judicial Member

Kanwar pal Singh, S/o Man Singh Permanent Auditor in the
Office of CDA (ORS) North Meerut, r/o 142/2 Mansarovar,
Meerut.

... Applicant

C/A Shri R.D. Agrawal

Versus

1. Union of India through the Controller General of
Defence Accounts, West Block, V, R.K. Puram, New Delhi.
2. C.D.A. (ORS) North Meerut Cantt. Meerut.

... Respondents.

C/A Shri N. B. Singh

ORDER

Hon'ble Mr. S. Dayal, Member-A.

In this case the applicant was proceeded against
for demanding and accepting illegal gratification. He was
proceeded against section 161 of I.P.C., 5(1) of Prevention
of Corruption Act. He was working as auditor in the Office
of the C.D.A. Gurdaspur at that time. Special Judge

Gurdaspur awarded punishment of R I for 6 months and R I 1½ years and fine of Rs. 1000/-. A show cause notice was served on the applicant on 08.05.95 proposing to award penalty of compulsory retirement under rule 19 (1) of CCS (CCA) rules 1965. The order of punishment was passed on 31.07.95 retiring the applicant compulsorily from service w.e.f. 31.07.95. Subsequently the applicant filed an appeal against conviction under 161 of I.P.C. & section 52 of Prevention of Corruption Act was ^{acquitted} ~~equated~~ giving him benefit of doubt.

2. Arguments of Shri R.D. Agrawal for the applicant and Shri S. Madhyan proxy to Shri N.B. Singh for the respondents have been heard. Pleadings on record have been taken into consideration.

3. Learned counsel for the applicant has cited the case of Deputy Director of Collegiate Education versus S Nagoor Meera, 1995 SCC (1&S) 686. Learned counsel for the applicant has relied on the following ratio of the judgment:-

"If, however, the government servant accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had continued in service."

4. Learned counsel for the applicant has also referred to the CA filed by the respondents in which the respondents have mentioned in para 33 that in case appeal is allowed by the Hon'ble High Court and the applicant exonerated of the charges, his case for reinstatement shall be considered.

Learned counsel for the applicant mentions that he has served a copy of the judgment in criminal appeal no. 280 of 1993, regarding the case of the applicant on learned counsel for the respondents on 27.01.98.

5. Learned counsel for the respondents has drawn attention to Government of India's Instructions no. 1 given in Swami Compilation of CCS (CCA) rules 1965, that penalty against Govt. servant is to be considered as soon as orders of his conviction is passed by first trial court. Learned counsel for the respondents has contended that this was done after giving show cause notice to the applicant and that his conviction on ground of acquittal giving him benefit of doubt does not entitle ^{him to} the relief sought by him.

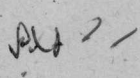
6. We have considered contention of the learned counsel for the respondents. We find from Govt. of India's instruction given at point no. 8 under rule 19 of CCS (CCA) Rules 1965, which is to the effect that if an appeal/revision in higher Court against conviction, succeeds and the Government servant is acquitted, the order imposing a penalty on him on the basis of conviction, which no longer stands becomes liable to be set aside. A copy of the judgment of the higher Court should, therefore, be immediately procured and examined with a view to decide:-

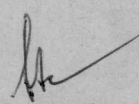
- i. whether the acquittal should be challenged in a still higher Court; or
- ii. whether, despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry against the Government servant on the basis of the allegations on which he was previously convicted."

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7. Learned counsel for the respondents is not in a position to mention whether such an examination of the judgment made by the respondents or not. We, therefore, direct the respondent to examine the judgment under the instant instruction of Govt. of India and pass an order regarding the case of the applicant within a period of three months from the date of supply of a copy of this order by the applicant to the respondents.

8. There shall be no order as to costs.


Member-J


Member-A

/pc/