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ORIGINAL APPLICATION NO.1290/04

Order dated 02.03.06

Applicant Prafulla Chandra Das, on attaining the age of superannuation, has faced retirement from service on 31.05.1988. He faced a criminal trial in the Court of 1d. Special Judge (in charge of C.B.I. cases) at Bhubaneswar in connection with (T.R.No.64/48 of 1999/94, arising out of R.C.No.41 (A)/92) criminal charges under Section 120-B and 409-I.P.C. and under Section 5 (1) (c)/5 (2) of the Prevention of Corruption Act, 1947 on the allegation that "the Applicant and one Prasanna Kumar Biswal, while working as Assistant Post Master and Postal Assistant respectively in Balasore Head Post Office during 1986, entered into criminal conspiracy with accused Bhaskar Chandra Das (a clerk of Revenue Section in the Office of Executive Engineer of Balasore Electrical Division) and in pursuance to the said conspiracy they misappropriated the Government money amounting to Rs.57,000/- by abusing their official position." In the said criminal trial, judgement was delivered on 08.08.03 recording an order of acquittal in favour of all the three accused persons, including the Applicant. On 17.9.03, the Applicant represented the authorities claiming reimbursement of legal expenses (as well as TA) incurred by him in defending the criminal case in question. The said prayer dtd. 17.9.03, the Applicant was turned down/rejected under Annexure-A/5 dtd. 29.04.04, relevant portion of which is extracted below:—

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"Your case of TA claim and legal expenses connecting to your involvement in the case of fraudulent encashment of NSCs amounting to Rs.57,000/- leading to

CBI case No.RC-41 (A)/92 and your acquittal vide judgement dtd.8.8.2003 in the Court of Special Judge (CBI) Bhubaneswar has been considered. You were identified as one of the subsidiary offenders due to your involvement in allowing irregular encashment of NSCs on the basis of identification given by one unknown person. The application for purchase, application for transfer and release order were missed from the guard file on which you were the custodian as APM (SB) Balasore HO.

Under the circumstances the department is not liable to bear your TA and legal expenses due to your involvement in the case and you were defending the case on your behalf in private capacity."

2. Applicant, being aggrieved, had approached this Tribunal in O.A. No.550/04, which was disposed of (on 2.9.04) with the following orders:

" Heard Shri M.B.K.Rao, Advocate for the applicant. When the matter was listed for hearing on admission on 19.8.04, Shri Rao was called upon to produce a copy of the Govt.order vesting right on him to claim reimbursement of legal expenses after he was acquitted of the charges by the Court of Special Judge, CBI, Bhubaneswar. Assuring that he will produce the relevant Govt.order on the subject, Shri Rao had sought for an adjournment and accordingly, the matter was posted to this day for admission. Today while submitting the matter, Shri Rao failed to produce a copy of the Govt.Order vesting a right on him to claim the relief that he has sought in this O.A. As the learned Counsel for the applicant has not been able to make out a prima-facie case for his claim, we see no merit in this O.A., which is accordingly disposed of. However, liberty is granted to the applicant to approach the Tribunal with a fresh O.A. when he fulfills all the legal provisions as well as the Govt. order in support of his claim. No costs."

Applicant, later, having caught-hold of a copy of Government of India (Home Ministry) Office Memorandum dtd.08.01.1959, has again approached this Tribunal, under Section 19 of the AT Act, 1985, in the present O.A. for a direction (to the Respondents) to reimburse the expenses incurred by him in defending the aforesaid criminal case.

3. The Respondents, who are contesting the case, have filed a counter and they have also relied upon the same office

memorandum dtd. 08.01.1959 of the Ministry of Home Affairs of Government of India to resist the claim of the Applicant. By filing a rejoinder, Applicant has also reiterated his grievances.

4. Heard Mr. M. Balakrishna Rao, Id. Counsel appearing for the Applicant and Mr. U. B. Mohapatra, Id. Sr. Standing Counsel appearing for the Respondents and perused the materials placed on record.

5. Para-2(a) of the aforesaid office memorandum dtd. 08.01.1959 of the Ministry of Home Affairs of Government of India reads as under:—

" 2 (a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant—Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal, instituted against him, by the state, in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government may, if they are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence."

6. The aforesaid office memorandum of the Government of India merely states that the "Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal, instituted against him by the state in respect of matters arising out of or connected with his official duties or his official position. In the case in hand, the Applicant was an accused in a criminal proceedings instituted against him, by the state, in respect of a matter directly connected with his official duties" *J*

and position as a Government servant and, therefore, he is not to get any assistance from the Government. But, however, for the reason of the second part of para-2(a) of the Office Memorandum dtd.08.01.1959, discretion of a very high degree, which has been vested with the Government, is available to be exercised, to reimburse the whole or a part of the expenses incurred by the Government servant (if the proceedings have concluded in favour of the Government servant) provided the Government are satisfied, from the facts and circumstances of the case, that the Government servant was subjected to strain of the proceedings without proper justification.

7. Neither the Applicant nor the Respondents have placed adequate materials to show as to whether there existed the facts and circumstances to show that the Applicant was subjected to strain of the Criminal proceedings without proper justification or not. There are also no materials to show as to whether the Respondent Department directed their consideration in that line or not. The Respondents Government, while exercising its discretion, should have considered the facts and circumstances of the case, by a reasoned and speaking order, to find out as to whether there are proper justification or not in the matter of granting re-imbursement of expences. No finding have been arrived at by the Respondent Department pertaining to just or unjustness in initiating criminal proceeding against the Applicant; although that in the requirement under the O.M. dtd.08.01.1959.

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8. In the aforesaid premises, this case is disposed of by remitting the matter back to the Respondents; who should re-examine the entire matter (claim of the Applicant for reimbursement of the expenses incurred by him in defending the criminal case in C.B.I.Court at Bhubaneswar) by keeping in mind the provisions contained in office memorandum dtd.08.01.1959 of Ministry of Home Affairs of Government of India and pass necessary final order within a period of 90 days.

9. Send Copies of this Order to Parties:

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02/03/06

Member (J)

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