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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 765 of 2006  
Cuttack, this the 28<sup>th</sup> day of September 2007.

Kishore Chandra Maharana ... Applicant  
Versus  
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be circulated to all the Benches of the CAT or not?

*Tarsem Lal*  
(TARSEM LAL)  
MEMBER (ADMN.)

*Dr. K. B. S. Rajan*  
(DR. K. B. S. RAJAN)  
MEMBER (JUDL.)

for members of

*Kishore Maharana*

(K.J.)

*Tarsem Lal*  
~~Kishore Maharana (K.J.)~~

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Original Application No. 765 of 2006  
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C O R A M:

THE HON'BLE **DR.K.B.S.RAJAN**, MEMBER (J)  
A n d  
THE HON'BLE **SHRI TARSEM LAL**, MEMBER(A)

1. Sri Kishore Chandra Maharana, aged about 50 years, son of Jagannath Maharana, ex-Senior Accountant, Office of the Accountant General \*(A & E), Orissa, Bhubaneswar at present residing at Nirupama Apartments, At/Po: Nayapalli, Bhubaneswar-751 012.

..... Applicant.

By legal practitioner: Ms.Chitra Padhi, Advocate.


-Versus-

UNION OF INDIA represented through

1. Comptroller and Auditor General of India, 10, Bahadur Shah Zaffar Marg, New Delhi.
2. Accountant General (A& E), Orissa, Bhubaneswar, At/Po: Bhubaneswar, Dist. Khurda.
3. Deputy Accountant General (Admn.) Office of the Accountant General (A& E), Orissa, Bhubaneswar, At/Po: Bhubaneswar-751 001, Dist. Khurda.

... Respondents.

By legal practitioner: Mr. P.R.J.Dash, ASC



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ORDER

DR.K.B.S.RAJAN, MEMBER(J):

The short question for consideration in this case is whether the disciplinary authority has any power to invoke the provisions of Rule 19(1) of the CCS (CC&A) Rules, 1965 when the High Court under Sec 320 of the Cr.P.C. compounds the offence. In other words, once compounding of offence is pressed into service, whether any element of conviction remains. The satellite question that arises for consideration is whether the appellate authority could on the ground of such compounding of offence concerned, convert the penalty of dismissal ordered by the Disciplinary Authority into one of compulsory retirement or should he pass orders for reinstatement.

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2. The facts of the case, with terse sufficiency are as under:-

The applicant, while working as Senior Accountant in the office of the Accountant General (Audit & Establishment), Orissa, was initially, on contemplation of disciplinary proceedings placed under suspension and on the applicant's having being convicted for commission of offences under Sec 498-A and 34 of the IPC r/w sec. 4 of the Dowry Prohibition Act. This conviction by the Criminal Court resulted in the Disciplinary Authority's passing an order of dismissal from service of the applicant, invoking the provisions of Rule 19 of the CCS (CC&A) Rules, 1965. Annexure A-2 order dated 18-06-2003 refers. However, it is by judgment dated 11-03-2004 that the High Court of Orissa, Cuttack passed the order, "In view of the above, I have no hesitation to compound the offences even if Section 320 of the Cr.P.C. Does not provide for compounding such offences and the opposite parties 1 to 8 are acquitted of the charges"



2. With the above development, the applicant had penned a representation dated 22-03-2004 requesting the Accountant General (A &E) to review the earlier dismissal order dated 18-06-2003. The appellate authority by order dated 27-09-2006 (Annexure A-5) however, held as under:-

*“The acquittal is on account of compounding wherein the parties have decided to patch up. The misconduct of Shri Moharana does not abate with the acquittal. The allegation basing on which the criminal charges were framed has never been disproved in any court of law. His conduct is unbecoming of a government servant*

*Under the above circumstances, and taking all other aspects of the case, I feel that continuance of Shri Moharana in Government service would not be in public interest. I feel ~~the~~ ends of justice will be served if Shri Moharana is given some lighter punishment than the earlier punishment of dismissal.*

*Thus, I, as the Appellate Authority hereby substitute the punishment of “compulsory Retirement” in place of “Dismissal from Service”. Compulsory retirement would be effective from 17-06-2003 the date on which the earlier order of dismissal was issued.”*



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3. On the basis of the above order, further orders vide Annexure A-6 were passed. The applicant has challenged the above order of compulsory retirement.

4. Respondents have contested the OA. According to them, Rule 19(1) provides sufficient discretion to the Appellate authority and it is based on the same that the order of compulsory retirement was passed and the same is fully justified and legal too. The basic contention of the respondents is that by compounding of the offence the High Court has not acquitted the applicant on merits.

5. Rejoinder has been filed by the applicant, wherein he has contended that when the High Court has acquitted the applicant, it is beyond the jurisdiction of the opposite parties to call in question the said decision of the Hon'ble Orissa High Court, the opposite parties having not

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been prevented from challenging the same in the still higher Court, which they preferred not to take recourse to.

6. Counsel for the applicant succinctly submitted that the appellate authority cannot substitute the order of the Disciplinary Authority in the manner in which it has been done and there is no scope of ordering any punishment upon the applicant as the High Court has acquitted the applicant.

7. Counsel for the respondents emphasized that the word 'may' appearing in Rule 19 of the CCS (CC&A) Rules provides sufficient discretionary latitude to the authorities and it is this discretion that was invoked in substituting the dismissal order by order of compulsory retirement.

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8. Arguments were heard and documents perused.
  
9. Rule 19(1) provides for passing of any penalty order, without holding any inquiry, in case any penalty is imposed on the ground of conduct which has led to his conviction on a criminal charge. Thus the power derived by the authorities to pass suitable order, without holding any inquiry under Rule 14 or 16 etc., of the CCS (CC&A) Rules, 1965 only when the ground of conduct has led to the conviction of the government servant. Thus, when the Trial Court convicted the applicant, the order passed by the Disciplinary Authority would certainly hold good. However, when the Hon'ble High Court had compounded the offence and specified that the applicant is acquitted from the criminal charges, the question is whether there is any conviction still fastened upon the applicant. It is trite law that conviction and acquittal are incompatible. The



presence of one would mean the absence of the other. It is appropriate at this juncture to refer to the observations of the Apex Court in the case of *Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288* wherein the Apex Court has observed:-

*“I do not think that a plea can be successfully put forward that granting permission or giving consent under sub-section (4)( a ) or (4)( b ) for compounding of an offence, the court is enjoined to make a serious detailed evaluation of the evidence or assessment of the case to be satisfied that the case would result in acquittal or conviction.”*

10. The words, “the case would result in acquittal or conviction” clearly goes to show that either of them alone is possible. In the instant case, when acquittal is present, the same would mean that conviction sinks into oblivion.



11. Again, in the case of *O.P. Dholakia v. State of Haryana*, (2000) 1 SCC 762, the Apex Court has held as under:-

*“But taking into consideration the nature of offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission, in the peculiar facts and circumstances of the present case, to compound. Necessarily the conviction and sentence under Section 138 of the Act stands annulled. The special leave petition is disposed of accordingly.” (Emphasis supplied)*

12. The above decision also goes to show that when the competent court compounds the offence, and the accused is acquitted, the inevitable result is not only mere acquittal but conviction too. Thus, when conviction is off the scene, powers under the provisions under Rule 19(1) of the CCS (CC & A) Rules, 1965 are not available to the Disciplinary authority. Result, any order passed invoking the above provisions on conviction (prior to compounding)



has to be annulled and the individual becomes entitled to reinstatement. Of course, it is for the respondents, if they so desire, to initiate departmental proceedings even after acquittal, as held by the Apex Court in the case of *Union of India v. Bihari Lal Sidhana, (1997) 4 SCC 385* , wherein it has been held -

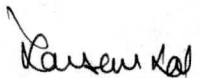
*“It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules”*


13. Thus, if the appellate authority decides to hold inquiry against the applicant, it can well do so but only after reinstatement. If the applicant was, prior to dismissal under suspension, there shall be a deemed suspension from the date of conviction and the applicant is entitled to subsistence allowance.



14. In the result, **the OA is allowed**. It is declared that the orders of the Disciplinary Authority and Appellate Authority (Annexure A-2 and A-5 ) are hereby set aside. Respondents are directed to issue suitable orders for reinstatement/deemed suspension as they may decide, and in case disciplinary action is to be taken, necessary charge sheet be issued within a period of three months and the proceedings be completed as expeditiously as possible. Needless to mention that the provisions relating to conducting of review of suspension shall be religiously followed and the applicant in that event be paid due subsistence allowance without any undue delay.

15. The above order shall be complied with, within a period of two months from the date of receipt of this order. No cost.

  
(TARSEM LAL)  
MEMBER(ADMN.)

  
(DR. K. B. S. RAJAN)  
MEMBER(JUDL.)

KNM/PS.