

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 924 of 2004

Indore, this the 26th day of April, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

B.R. Madame
S/o Shri Budharam Madame
Aged about 58 years
Income Tax Inspector(U/s)
R/o 78/3, Income Tax Colony,
Sanjeevani Nagar,
Jabalpur Applicant

(By Advocate – Shri Manoj Sharma)

V E R S U S

1. Union of India,
Through Secretary,
Ministry of Finance, Department of
Revenue, North Block,
New Delhi.
2. The Central Board of Direct Taxes,
North Block, New Delhi.
Through its Chairman.
3. The Chief Commissioner of Income Tax
Aayakar Bhavan, Hoshangabad Road,
Bhopal.
4. The Commissioner of Income Tax-II
Central Revenue Building, Napier Town,
Jabalpur. Respondents

(By Advocate – Shri B.da.Silva Sr. Adv. alongwith
Shri S.Akhtar)

ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicant has sought the following main reliefs :-

“ii. Direct the respondents to revoke the suspension of the applicant forthwith.

iii. Direct the respondents to pay the arrears of subsistence allowance as per appropriate rate/s.”

2. The brief facts of the case are as stated by the applicant are that he was appointed on the post of Upper Division Clerk (for short ‘UDC’) in the Income-tax Department on 28.8.1971. In due course of time he was promoted as Income-tax Inspector in 1994. When the applicant was working in Income-tax Office, Chhindwara, a trap was laid on 11.4.1990. Thereafter, a criminal case was registered against the applicant. Ultimately, the criminal case was finalized on 30.11.1996 where the applicant was convicted and penalty of Rs.3000/- was imposed along with 1½ years imprisonment. Thereafter, the applicant called in question the judgment dated 30.11.1996 containing the conviction as well as sentence for the alleged criminal offence by way of Criminal Appeal No.2170/1996 before the Hon’ble High Court of Madhya Pradesh, Jabalpur wherein vide order dated 6.12.1996 the applicant was released on bail and the criminal appeal was admitted. Thereafter, the applicant moved an I.A.No.9109/96 in the said Criminal Appeal No.2170/96 and vide order dated 2.1.1997 the conviction of the applicant was suspended. According to the applicant, the sentence and conviction both have been stayed by the Hon’ble High Court, therefore, there is no rhyme and reason to continue the applicant still under suspension. Since the respondents have not revoked the suspension, the applicant has filed this Original Application.

3 The respondents in their reply have stated that the applicant while working as Supervisor Grade-II in the office of the Income-tax Officer, Chhandwara was caught red handed by the officers of the CBI, Jabalpur while demanding and accepting a bribe of Rs.200/- on 12.4.1990. A case under Sections 7 and 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act,1988 was registered against the applicant on 14.4.1990. The applicant was placed under suspension vide order dated 25.5.1990. Subsequently, vide order dated 12.7.1990, sanction order was passed under Section 19(1) of the Prevention of Corruption Act, 1988 for the prosecution of the applicant. The applicant had made a representation for revocation of suspension. The suspension of the applicant was revoked vide order dated 30.3.1993 although the CBI was not inclined to get it revoked since the matter was at the evidence stage. The applicant was convicted on the criminal charges under sections 7,13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and was awarded a sentence of 1½ years rigorous imprisonment and a fine of Rs.3,000/- by the Special Judge, CBI cases, Jabalpur vide order dated 30.11.1996. Subsequently, in view of the conviction, the applicant was placed under suspension under Rule 10(1) of the CCS(CCA)Rules,1965 vide order dated 24.12.1996. Thereafter, the applicant filed a Criminal Appeal No.2170/1997 before the Hon'ble High Court against the conviction order dated 30.11.1996. The Hon'ble High Court vide its order dated 2.1.1997 on an I.A No.9109/96 had directed that the effect of conviction shall remain suspended during the period the applicant remains on bail. The request of the applicant for revocation of suspension, in view of the Hon'ble High Court's order dated 2.1.1997, was considered by the disciplinary authority. The respondents have further stated that it is a settled law that suspension of the sentence does not bring an end to the conviction nor does it set aside the conviction and it is only the execution of conviction that is kept in abeyance. Conviction by a

lower court, which has still not been set aside by any higher Court, is a strong ground for keeping the official under suspension. As per Rule 10(2)(b) of the CCS(CCA)Rules,1965 if in the event of a conviction for an offence, a Government servant is sentenced to a term of imprisonment exceeding forty-eight hours, he shall be deemed to have been placed under suspension by an order of the appointing authority. The respondents have further stated that , under Rule 10(5)(c) an order of suspension made or deemed to have been made, may at any time be revoked by the competent authority in the following circumstances:

- (i)In arrest & detention cases, if it is decided not to proceed further against the Government servant by filing a charge sheet in the court;
- (ii) If appeal/revision against acquittal in higher court fails;
- (iii) If acquitted in trial court or if appeal/revision in higher court against the conviction succeeds and he is ultimately acquitted and when it is not proposed to continue him under suspension even though departmental proceedings may be initiated against him.”.

The respondents have further stated that since the applicant was convicted by the lower court and his appeal is still pending in the higher court, his suspension on the ground of conduct which has led to his conviction on a criminal charge is as per law, and therefore, the disciplinary authority has decided not to revoke the suspension of the applicant. In this context the respondents have relied on the decision of the Hon'ble Supreme Court in the case of Dy.Director of Collegiate Education (Administration) Madras Vs. S.Nagoor Meera, 1995 SCC (L&S)686. The respondents have, therefore, contended that unless the conviction of the applicant is set aside, the suspension of the applicant cannot be revoked.

4. Heard the learned counsel of both the parties.

5 During the course of arguments, the learned counsel for the applicant has stated that since the conviction has been suspended by



the Hon'ble High Court, there is no ground to continue the applicant still under suspension. Even during the pendency of the trial, the applicant has been on duty. On this account alone, the impugned order of suspension deserves to be set aside. He also submitted that a similarly situated person, namely, Shri K.K.Pratap, who had also been placed under suspension under similar circumstances has been granted 75% subsistence allowance and his suspension has been revoked after two years of suspension and on the ground of parity, the impugned order of suspension of the applicant deserves to be revoked. The learned counsel has further stated that the conduct of the respondents is violative of fundamental rights as enshrined and guaranteed under Articles 14 & 16 of the Constitution.

6. On the other hand, the learned counsel for the respondents has stated that the conviction of the applicant in the criminal case still stands as the same has not been set aside on merits by the Hon'ble High Court and only the execution of the sentence is suspended and, therefore, in terms of the provisions of the CCS(CCA)Rules unless and until the applicant is acquitted by the higher courts, his suspension cannot be revoked.

7. We have given careful consideration to the rival contentions. We find that the applicant was convicted in a criminal case under the Prevention of Corruption Act by the Criminal Court and was sentenced to rigorous imprisonment for 1½ years and a fine of Rs.3000/- vide order dated 30.11.1996. As per Rule 10(2)(b) ibid a Government servant shall be deemed to have been placed under suspension by an order of appointing authority with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours. We find that it is because of this rule position, the applicant has been placed under suspension vide order dated 24.12.1996. Since the

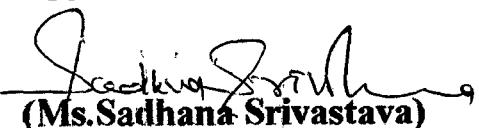
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conviction has only been suspended and not finally set aside by the Hon'ble High Court, the revocation of suspension of the applicant cannot be considered, as it is not covered by the circumstances referred to in para 3 above. We find that these circumstances are also reproduced in Para 14(Revoking of Suspension) of Chapter-2 relating to Suspension – A Digest of Swamy's Compilation on CCS(CCA)Rules,1965. We also find that the Hon'ble Supreme Court in the case of S.Nagoor Meera, (supra) has held as under:-

“10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice”.

8. In view of the rule position and the above decision of the Hon'ble Supreme Court, we are of the considered view that there is no ground at this stage to interfere with the order of suspension.

9. In the result, for the reasons stated above, this Original Application is dismissed, however, without any order as to costs.


(Ms. Sadhana Srivastava)

Judicial Member


(M.P. Singh)
Vice Chairman

Rkv.

पूर्णकाल से ओ/न्या.....जबलपुर, दि.....
प्रतिदिवसि ८.८.३.८८
 (1) सचिव, दस्तावेज़ विभाग, जबलपुर
 (2) आदेशक विभाग, जबलपुर
 (3) प्रधानी श्री/श्रीमती/इ.....के कार्यालय
 (4) विधायक, देशपाल, जबलपुर, जबलपुर
 सूचना एवं अधिकार कार्यालयी द्वारा

गुणेन
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