

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 316 of 2003

Gwalior, this the 25th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

J.L. Badole
Retd. Income Tax Officer
Present Address
D-403, Mahavir Darshan
Co-Operative Housing Society
Ltd. Sector-2, Plot No.2
Kandiwali (West)
Mumbai-400 067

APPLICANT

(By Advocate - Shri M.N. Banerjee)

VERSUS

1. Union of India
Through the Secretary
Ministry of Finance
Government of India
North Block Secretariat
New Delhi.
2. Chairman
Central Board of
Direct Taxes
North Block
New Delhi.
3. Chief Commissioner of
Income Tax
Hoshangabad Road
Bhopal (M.P.)
4. Commissioner of Income Tax
Napier Town
Jabalpur
5. Joint Commissioner
of Income Tax Range-II
Jabalpur

RESPONDENTS

(By Advocate - Shri B.Da. Silva)

ORDER

By filing this OA, the applicant has sought the following main relief :-

"i. Necessary Writ order or directions may kindly be issued to respondents to pay retiral dues with interest @ 18% to the applicant immediately".



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2. The brief facts of the case are that the applicant was working as Income Tax Officer and retired from Government service on attaining the age of superannuation on 31.07.2002. He was placed under suspension by CIT, Jabalpur vide order dated 27.2.1997 under sub rule(1) of ^{Rule} 10 of CCS(CCA) Rules, 1965 because of his conviction by the Vth Addl. Session Judge and Special Judge CBI, Jabalpur for offences under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act. The applicant was sentenced to rigorous imprisonment for 3 years and fine of Rs. 30,000/-. On appeal of the applicant, the Hon'ble High Court vide order dated 10.10.1996, suspended the execution of the sentence of imprisonment. Since the execution of conviction of imprisonment has only been suspended and that the order acquitting or otherwise of the applicant is yet to be passed by the Hon'ble High Court, the retirement benefits such as GPF and CGEIS have only been paid and encashment of leave has also been sanctioned. The payment of DCRG, Pension etc. could be decided only on the outcome of the appeal pending before the Hon'ble High Court, in view of the provision under relevant CCS(CCA) Rules 1965, which are reproduced below :-

" Action on conviction.- (a) On a criminal charge. - to be The following principles should apply in regard to action/ taken in cases where Government servants are convicted on a criminal charge:-

(i) In a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant *prima facie* undesirable, the Disciplinary Authority may, if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal, or, if an appeal has been filed, without waiting for the decision in the first Court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary.

(ii) As soon as a Government servant is convicted on a criminal charge, he may, in appropriate cases, be placed under suspension, if not already suspended.

(iii)

(G.I., M.H.A., O.M. No. F. 43/57/64-AVD(III), dated the 29th November, 1966, as amended by G.I., C.S. (Dptt. of Per.) O.M. No. 371/3/74-AVD(III), dated the 19th September, 1975, — Extract.)

Action when appeal/revision against conviction succeeds.—
(a) 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

(b) If it is decided to take the matter to a still higher Court, action to institute proper proceedings should be taken with the least possible delay and (the penalty imposed shall not be set aside during the pendency of such proceedings).

(c) If, on the other hand, it is decided that a departmental enquiry may be held, a formal order should be made —

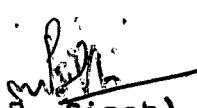
- (i) setting aside the order imposing the penalty on the basis of the conviction; and
- (ii) ordering such departmental enquiry.

(Standard Form for such order is annexed —From at the end chapter).— In cases where the penalty imposed on the basis of the conviction was dismissal, removal or compulsory retirement from service, the order should also state that under Rule 10(4) of the CCS(CCA) Rules, 1965, the Government servant is deemed to be under suspension with effect from the date of dismissal, removal or compulsory retirement from service.

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(G.I., M.H.A., O.M.No.F.43/57/64-AVD(III), dated the 29th November, 1966, as amended by G.I., C.S. (Dept. of Per.) O.M.No.371/3/74-AVD(III), dated the 19th September, 1975— Extract.)

3. In view of the above provision of CCS(CCA) Rules, 1965 the applicant is not entitled to get any benefit at this stage and it can be decided only after the out-come of the Criminal case pending against the applicant. In view of this, the OA is dismissed. No costs.


(M.P. Singh)
Vice Chairman