

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No.543/2002

Jabalpur, this the 8th day of March, 2004

HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN
HON'BLE SHRI MADAN MOHAN, MEMBER (J)

K.R.Uikey s/o Sh. Hunnilal Uikey,
Aged about 55 years,
R/o B-2, Income Tax Colony, Kotra,
Sultanabad, Bhopal (MP).

...Applicant

(By Advocate: Shri N.K.Gupta)

-versus-

1. Union of India through
Ministry of Finance,
New Delhi.
2. Chief Commissioner of Income Tax (CCA),
Aayakar Bhawan,
Hoshangabad Road,
Bhopal, M.P.
3. Commissioner of Income Tax
(Disciplinary Authority) Bhopal,
Aayakar Bhawan, Hoshangabad, Road,
Bhopal.
4. Additional Commissioner of Income Tax,
Vigilance, Bhopal, M.P. ...Respondents

(By Advocate: Shri B.da.Silva, Senior Advocate with Sh.S.Akhtar)

ORDER (ORAL)

By Shri Madan Mohan, Member (J):

By filing this O.A. the applicant has sought the following main reliefs:-

- i) to quash the order dated 6.12.2001(A/5) of respondent no. 3 and also order dated 22.5.2002 (A/7) of respondent no. 2 being illegal, arbitrary, malafide and unconstitutional.
- ii) to direct the respondents to keep the applicant under suspension as was already going on, till the final decision of Hon'ble High Court of Madhya Pradesh in criminal appeal No. 526/98.

2. The brief facts of the case are that the applicant was working as a Cashier-cum-Clerk in the office of Income

of posting in the said office the applicant has committed breach of trust and defaulted an amount of Rs. 1,38,157.56 and, therefore, an offence U/S 409 IPC and U/S 5(2) read with Section 5(1)(c) of Prevention of Corruption Act, 1947 has been registered against the applicant on 24.7.1985 vide Crime No. 679/85 in P.S.Jahagirabad, Bhopal. In the said case, the applicant was tried before the Special Judge, C.B.I., Bhopal in which the concerned court held him guilty vide its judgement dated 5.3.1998 and sentenced him for 2-2 years of R.I. and fine of Rs. 50,000/- - Rs. 50,000/- and further ordered that in default of fine to suffer 6-6 months additional R.I. and order that sentence concurrently. Against the said judgement, the applicant preferred a criminal appeal No. 626/98 in which the Hon'ble High Court of Madhya Pradesh vide its order dated 7.4.1998 was pleased to suspend the sentence awarded by Special Judge, C.B.I., in order to release the applicant on bail. Accordingly, the applicant was released on bail in compliance with the order of the Hon'ble High Court but the instant appeal is still pending but during this period on 8.10.2001 respondent no. 2 has issued a show cause notice under Rule 19(1) of the Central Civil Services (CCS) Rules, 1965 stating that after judgement dated 5.3.1998 of Special Judge, C.B.I., Bhopal, the applicant cannot be retained in service and he has been proposed to impose upon him the penalty of dismissal from service under Rule 11(ix) of CCS(CCS) Rules, 1965 and the applicant was asked to submit his reply to the show cause notice within 15 days. Against the said show cause notice the applicant submitted his reply on 15.11.2001 stating that he has been falsely implicated in the said criminal case and conviction made by the Special Judge, C.B.I., Bhopal against which the applicant has preferred a criminal appeal in the Hon'ble High Court of Madhya Pradesh. The said criminal appeal is still pending by the Hon'ble High Court by its order dated

7.4.1998 suspended the sentence and the applicant was released on bail, and he hopes to be acquitted from the alleged charges. and until He prayed that unless/the judgement of Hon'ble High Court is delivered, he should be restored as a status-quo.

2.1 The respondent no. 3 vide its order dated 6.12.2001 dismissed the applicant from service in an illegal and arbitrary manner while he ought not to have been dismissed from service but should have been waited for the final decision of the Hon'ble High Court in criminal appeal no. 626/1998. Hence, the impugned order is absolutely illegal, arbitrary and against the provisions of law and is, therefore, liable to be quashed.

3. We have heard the learned counsel for the parties and have carefully perused the pleadings available on record.

4. Learned counsel for the applicant has simply argued only on the basis of the judgement of Special Judge, C.B.I. against which the criminal appeal is still pending and more so the applicant has been released on bail vide the order of the Hon'ble High Court passed on 7.4.1998, applicant should not have been dismissed from service but should have waited for the final outcome of the criminal appeal. At the most, the respondents could have kept the applicant under suspension as they have no right to dismiss the applicant from service before the final judgement of the Hon'ble High Court.

5. In reply, the learned counsel for the respondents has argued that after considering the overall facts and circumstances of the case, the gravity of the offence committed by the official and keeping in view the judgement of the Hon'ble Supreme Court in the case of Deputy Director of Collegiate Education (Admn.) vs. S.Nagoor Meena (1995) 3 SCC 377, action as per rule 19(i) of CCS (CCA) Rules, 1985 was taken by the disciplinary authority/respondents. Aggrieved with the said order, the applicant filed an appeal before the Chief Commissioner of Income Tax, Bhopal who vide his order dated 22.5.2002 confirmed the punishment order passed by the disciplinary authority. Keeping in view of the gravity of

offence committed by the applicant vis-a-vis his conviction by the Hon'ble Court, he was not allowed to remain in government service. The pendency of his appeal against his conviction before the Hon'ble High Court of Madhya Pradesh does not debar the application of Rule 19(i) of CCS (CCA) Rules. We are also in agreement with the arguments advanced by the learned counsel for the respondents.

6. In view of the above discussion, we are of the considered view that the O.A. does not have any merit and deserves to be dismissed. Accordingly, the O.A. is dismissed with no order as to the costs.

Madan Mohan
(MADAN MOHAN)

MEMBER (J)

M.P.Singh
(M.P.SINGH)

VICE CHAIRMAN

/na/

मुख्यमंत्री की विवरण दिए गए रूप से.....

- (1) अधिकारी का नाम एवं विवरण.....
- (2) अधिकारी का विवरण एवं विवरण.....
- (3) अधिकारी का विवरण एवं विवरण.....
- (4) अधिकारी का विवरण एवं विवरण.....

मुख्यमंत्री की विवरण दिए गए रूप से.....

Kapil Dev
मुख्यमंत्री की विवरण दिए गए रूप से.....

Fusseel
मुख्यमंत्री की विवरण दिए गए रूप से.....
26/3/04