

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1192/2017

Reserved on: 26.09.2017
Pronounced on: 10.10.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Smt. Jagwati, Aged 72 years
Widow of late Ram Chand-Ex.UDC
R/o House No.5, Molar Band,
Badarpur,
New Delhi-110044.Applicant

(By Advocate: Sh. P.C. Mishra)

Versus

1. Union of India through
Secretary to Govt. of India,
Ministry of Science & Technology,
Department of Science & Technology,
Technology Bhawan, Qutab Institutional Area,
New Mehrauli Road,
New Delhi – 110 016.
2. Director General,
Council of Scientific & Industrial Research (CSIR)
Govt. of India, Rafi Marg,
New Delhi – 110 001.
3. Director Central Road Researching Institute,
Delhi Mathura Road,
PO: CRRI, Okhla,
New Delhi – 110 025.Respondents

(By Advocate: Sh. Bhuvnesh Satija for R-2 & R-3)

O R D E R

The applicant has filed this Original Application under
Section 19 of the Administrative Tribunals Act, 1985
against the communication dated 22.04.2016 (Annexure 1)

of the respondents refusing to release arrears of salary/pension and family pension etc. in her favour after the demise of her husband.

2. The facts of the case, in brief, are that the applicant's husband Ram Chand entered into the service of the respondents as LDC on 22.11.1962 and was subsequently promoted as UDC vide order dated 25.03.1987. While working as UDC, the applicant's husband was dismissed from service vide order dated 23.05.2000 on the ground of his conviction by Addl. Sessions Judge on 16.12.1999 U/S 302/34. Against the conviction order, he preferred a Criminal Appeal No.46/2000 before the High Court of Delhi. During the pendency of the appeal, he expired on 22.02.2014, however, he, along with others, was acquitted by the High Court of Delhi vide order dated 04.08.2015. It is the contention of the applicant that after the verdict of the High Court acquitting her husband, she sent a letter dated 30.11.2015 to the respondents requesting them to release the retiral benefits, GPF, Gratuity etc. with legal dues and arrears thereof since 1997 and after the death of her husband, she may be granted the family pension, which was rejected by the respondents vide the impugned order dated 22.04.2016. Aggrieved, the applicant filed a statutory appeal/revision under Rule 23 read with Rule 29

of CCS (CCA) Rules, 1965 on 20.02.2017 to the respondent no.2 for setting aside the dismissal order dated 23.05.2000 on the ground that since the very foundation of dismissal of her husband from service i.e. his conviction does not exist after his acquittal by the High Court of Delhi, her husband was entitled to receive regular salary during the suspension period and full salary from 23.05.2002 till his death i.e. 22.02.2014. This appeal is still pending. In view of the factual matrix, the applicant submits that she is entitled to receive arrears of salary, arrears of pension & family pension and all other attendant benefits with interest. To buttress her contention that after her husband having been acquitted on appeal, the dismissal order needs to be revised and her husband be deemed reinstated and following this he would become entitled to all the benefits had he continued in service, the applicant has relied upon the decision of the Apex Court in the case of ***Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera*** [1995 (3) SCC 377].

3. The respondent nos.2 & 3 have filed their written statement denying the contentions of the applicant made in the OA and submitted that the deceased employee was dismissed in the year 2000 and expired in 2014. The respondents further submitted that the High Court of Delhi

exonerated him of his criminal charges in 2015 by giving him benefit of doubt. It is further submitted on behalf of the respondents that had the deceased employee been alive, the question of reinstatement may have been considered by the disciplinary authority taking into consideration his acquittal order but since the deceased employee expired prior to his exoneration/acquittal, the question of his reinstatement with retrospective effect does not arise. They have also submitted that the decision of the Apex Court relied upon by the applicant is not applicable in this case as the Apex Court did not hold that acquittal of a dismissed employee in appeal or other proceedings would, ipso facto, render the dismissal as if the order of dismissal stands reviewed leading to reinstatement.

4. During the course of oral arguments, learned counsel for the applicant argued that the husband of the applicant was acquitted by the High Court though by getting benefit of doubt, therefore, the initial order of dismissal, which was passed under Rule 19 (1) of CCS (CCA) Rules, 1965, had become void because the very basis of this order was his conviction, which was upturned by the High Court by acquitting him.

5. Learned counsel for the applicant also drew my attention to paragraph 9 of decision of the Apex Court in

case ***Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera*** (supra),

which reads as under:-

*"9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311 (2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311 (2). As held by this court in *Shankardass v. Union of India* (1985) 2 SCR 358*

"Clause (a) of the second proviso to Article 311 (2) of the constitution confers on the government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge." But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

He further argued that as per the above decision, if the government servant-accused is acquitted on appeal or other proceeding, the penalty order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service.

6. Learned counsel for the respondents, invoking the same decision of the Apex Court as relied upon by the applicant, drew my attention to paragraph 10 thereof and argued that while the Supreme Court judgment suggests that the review of penalty can be taken up, however, the judgment uses the word 'can be' which gives the latitude to the respondents to review it or otherwise. For the sake of clarity, paragraph 10 of the judgment is reproduced 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 proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

7. Learned counsel for the respondents argued that review was indeed done and it was felt that as the employee, who was accused in the murder case, was already dead when the judgment of acquittal came, therefore, there was no provision of reinstating a dead

person. His other argument was that the applicant, who is the wife of the deceased employee, has already made an appeal against the order of dismissal and as the matter is subjudice, therefore, better course of action would be to issue a direction to the appellate authority to decide her appeal expeditiously.

8. I have given thoughtful consideration to the pleadings, meticulously gone through the **S. Nagoor Meera** case relied upon by both the counsels and heard the arguments so advanced by the counsel for both the sides.

9. Learned counsels from both the sides indeed have relied on the Apex Court's judgment in the case of **Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera** (supra), which essentially provides that once the acquittal has taken place, his order of dismissal can be reviewed. Here, the word 'can' invariably should be read as 'shall', therefore, it shall be incumbent upon the respondents to review the dismissal order. The question, therefore, arises whether this process of review has been completed or not. It is apparent from the record that through the impugned order dated 22.04.2016, the applicant's request for release of the retirement dues due to her late husband has been rejected by the respondent no.3 i.e. Director, CRRI and a statutory

appeal/revision under Rule 23 read with Rule 29 of CCS (CCA) Rules, 1965 against the above order has been made to respondent no.2, namely, Director General, CSIR on 20.02.2017.

10. In this view of the matter, it cannot be said that the order with regard to the review of dismissal of the deceased employee has attained finality and, therefore, it will be proper to await the decision of the appellate authority on this issue. However, I consider it necessary to direct the respondent no.2 to take a decision on the applicant's appeal/revision within three weeks from the date of receipt of certified copy of this order as the appeal of the applicant is pending with him since 20.02.2017. The respondent no.2 is further directed that while taking a decision on the appeal/ revision moved by the applicant, the same shall not be rejected on the ground of limitation. They are further directed to take into account judicial pronouncements in such matter including the Apex Court decision in ***Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera*** (supra).

11. The OA is accordingly disposed of with no order as to costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/