

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A. No. 384/2019

This the 05th day of November, 2019

Kavitaben Dayalbhai Tahiliyani
Inspector of Income Tax (Under order of Dismissal)
Female, Aged 75 years,
Residing at C/o Girish Tahiliyani,
A-104, Unique Essenza,
Opp. Kargil Petrol Pump,
Sola, Ahmedabad – 380061.

..... Applicant

(By Advocate : Shri N.S.Kerial)

VERSUS

1. Union of India
Notice to be served through
The Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.
2. Central Board of Direct Taxes
Notice to be served through
The Chairman, CBDT,
North Block, New Delhi 110 001.
3. Principal Commissioner of Income Tax,
Office of the Principal Chief Commissioner of Income Tax,
Gujarat Region,
2nd Floor, Aayakar Bhawan,
Ashram Road, Opposite All India Radio,
Ahmedabad.

CAT, Ahmedabad Bench

4. Chief Commissioner of Income Tax,
1st Floor, Aayakar Bhavan,
Annexe Building, Race Course Circle,
Vadodara - 390 007.
5. The Commissioner of Income Tax-IV
2nd Floor, Old GEB Building,
Race Course Circle,
Vadodara-390 007.

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Respondents

ORDER (ORAL)

Per : Hon'ble Shri M.C.Verma, Judicial Member

1. Matter is at motion hearing stage. Learned counsel Shri Alphus Rockey Advocate, appearing for applicant urged that applicant was holding the post of Inspector, was booked for the offences under Section 7 and Section 13(2) of the Prevention of Corruption Act, was tried in Special Case No.6/1996 and was convicted by the Trial Court in year 2002. That applicant preferred appeal on the file of Hon'ble High Court and the Sentence of the applicant was kept in abeyance till disposal of Criminal Appeal. That in year 2004 applicant was served with show cause notice by the

Disciplinary Authority directing to show cause why her service should not be terminated upon the judgment rendered in Special Case No.06/1996 and on 29.07.2004 penalty of dismissal from service was inflicted. That Hon'ble High Court did acquit the applicant and thereafter applicant made request to the Commissioner of Income Tax-IV to revoke the Order of dismissal, that an Advocate notice, dated 01.04.2019, for redressing her grievance, was also sent to the respondents but nothing positive yielded and hence is the OA for direction to the Respondents to grant all retiral dues, including arrears of pay etc. to the applicant.

2. Considered the submissions and perused the record. Crux of relevant facts, as has been stated in the OA or has emerged from record are that applicant, on 22.12.1995, when was serving on the post of Income Tax Inspector was trapped by Anti Corruption Bureau, for receiving illegal gratification, she was charge-sheeted for the offence under Section 7 and Section 13(2) of the Prevention of Corruption Act, charge-sheet yielded into Special Case No.6/1996 and on 30.07.2002 she was held guilty by the Court and punishment in term of rigorous imprisonment of two years with fine of Rs.3,000/- and further rigorous imprisonment of three months in default of fine for the offence under Section 7 and rigorous imprisonment of 01 year & 06 months with fine of

Rs.2,000/- and rigorous imprisonment of 02 months in default of fine for offences under Section 13(2) of the Prevention of Corruption Act, was inflicted.

3. In year 2004 applicant was served with show cause notice by the Disciplinary Authority, she has been directed to show cause why her service should not be terminated upon the judgment rendered in Special Case No.06/1996 and vide Order No.BRD/CIT-IV/Est. Gr.C/KDT/2004-05, dated 29.07.2004, passed by the Disciplinary Authority; penalty of dismissal from service was inflicted on the applicant. No appeal against order of dismissal from service was preferred by the applicant; however, applicant did prefer appeal against the judgment of Trial Court. The Sentence of the applicant was kept in abeyance till disposal of Criminal Appeal and on 18/19.09.2018 Hon'ble High Court holding, in Criminal Appeal No.689/2002, that demand, acceptance & recovery of the bribed money is not proved beyond reasonable doubt set aside the judgment of Conviction & Order of Sentence passed by Trial Court and acquitted the applicant. That applicant thereafter, through her counsel gave Notice dated 01.04.2019 (Annexure A/4) to the Commissioner of Income Tax-IV Vadodra, submitting certified copy of judgment of Hon'ble High Court, to release all consequential benefits, including retiral benefits. Needless to say, no request in this notice was there to revoke or recall order of dismissal from

CAT, Ahmedabad Bench

Service. Applicant thereafter also, through her counsel gave another Notice dated 23.05.2019 (Annexure A/5) to the Commissioner of Income Tax-IV Vadodra and without waiting more, for outcome of her notice, did file instant O.A., on 18.10.2019 having following prayer:-

“(A) Be pleased to allow this present application

(B) Be pleased to direct the Respondents herein to expeditiously grant to the present applicant all retiral dues including arrears of pay including any and all consequential benefits which the present applicant would be entitled to as if the Original Order of dismissal being Order No. BRD/CIT-IV/Est..Gr.c/KDT/2004-05 dated 29.7.2004 had never been passed.

(C) Be pleased to impose exemplary cost on the Respondents herein for the untenable and illegal inconvenience caused to the present applicant who is a Female Senior Citizen.

(D) Be pleased to pass any further order or directions as the Hon’ble Tribunal may deem fit in the interest of justice.”

4. Having gone through the record, a query was put to learned counsel for applicant that order of dismissal from service is still in force, has not even been prayed to be revoked in initial notice dated 01.04.2019 (Annexure A/4) of the applicant nor it has been impugned in instant O.A., then how direction to grant retiral dues and arrears of pay can be given and whether this O.A., in its present form, is maintainable ? and learned counsel replied that after Order of acquittal by the Hon'ble High Court, order of

dismissal from service ipso facto has lost its sanctity and hence, non challenge of that order is having no bearing.

5. Needless to say that Order of dismissal has not been challenged in the OA. The pay and allowances of a Government employee who is dismissed from service cease from the date of such dismissal and his pension and gratuity shall also forfeit. As long as Order of dismissal would remain in force, prayer as has been made in the O.A. cannot be entertained. The O.A. in its present form is devoid of merit prima facie and hence is dismissed.

(M.C.Verma)
Member (J)

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