



Personnel and Administrative
Reforms (N) Department,
Secretariat,
Chennai-9.

Letter (Ms) No.91/N/2012 - 1, dated 19.06.2012

From
**Dr.V. Irai Anbu, I.A.S.,
Principal Secretary to Government.**

To
All Secretaries to Government,
All Departments of Secretariat.
All Heads of Department.

Sir,

Sub: Public Servants – Cases ended in conviction /
acquittal – follow up action – instructions -
issued.

- Ref:** 1. Government Memorandum No. 301/70-1
Public (Services-B) Department, dated
31.1.1970.
2. Government Letter No. 42619/P&AR(N)
Department/95 dated 20.6.1995 .
3. Letter (Ms) No.126, Personnel and
Administrative Reforms (N) Department,
dated 26.4.1995.

In the Government Memorandum first cited, the Departments of Secretariat and the Heads of Department were informed that the High Court, Madras in its order dated 03.09.1969 in Criminal Miscellaneous Petition No.3311/68 filed by the accused officials who were convicted in the Lower Court and requesting stay of all further proceeding by way of disciplinary action in pursuance of the conviction, has observed that once the conviction is recorded by a competent court of Law on a criminal charge and until such conviction is set aside either on appeal or revision, such conviction remains effective and can be made the basis of dismissal, removal or reduction in rank of a public servants. It was also intimated that, the above decision may be kept as guidance. The same was reiterated in the reference 2nd cited.

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2. It has been brought to the notice of the Government by the appropriate authority that in a number of cases, after the Judgement is pronounced and conviction is imposed, no follow up action is taken by the competent Disciplinary Authority / Head of the Department, to obtain a copy of Judgement either from the concerned court or from the Director of Vigilance and Anti-Corruption, for causing necessary departmental action against the convicted Government Servant, u/r 17 (c) (i)(1) of Tamil Nadu Civil Services (D&A) Rules 1955, in view of his conviction in the criminal case.

3. As a result, the convicted persons get postings and serve in the departments concerned, on the ground that appeal has been filed by them against conviction and the same is pending before the higher Judicial forum.

4. In this connection, it is clarified that whenever an appeal is preferred by the convicted public servant and the sentence is suspended and not the conviction, the conviction is in vogue till the trial court's Judgement is revised by the appellate / revisional court. The crux of the relevant Judgements of the High Court, Madras and Supreme Court of India are furnished below, subject-wise, for reference:-

1) (a) Convicted Public Servant should not be allowed to continue in service:-

The Division Bench of the Madras High Court in V.Natarajan and another Vs. Deputy Inspector General of Police, Thanjavur Range, Thanjavur and others (2005 (4) MLJ 366) have observed as follows :-

"If, such an official convicted for corruption is allowed to continue in service, it will shake the public administration and the people's confidence in the administration and will also demoralise the honest policemen".

1) (b) Convicted Public Servant should not be allowed to hold public office till he is exonerated after conducting a judicial adjudication at the appellate or revisional level:-

In K.C.Sareen Vs CBI, Chandigarh reported in [2001 – SCC (Criminal) 1186-2001(6) SCC 584], the Hon'ble Supreme Court has observed as follows :-

"The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again, should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts, until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public

office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions, besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted persons. If honest public servants are compelled to take orders from proclaimed corrupt officers, on account of the suspension of the conviction, the fall out would be one of shaking the system itself. Hence, it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold (SIC) Public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level.”

(I) (c) No need to wait till the appeal / revision and other remedies are over:-

In Deputy Director of Collegiate Education (Administration), Madras Vs. S.Nagoor Meera reported in (1995) 3 SCC 377, the Hon’ble Supreme Court has observed as follows:

“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 for initiating disciplinary proceedings till the appeal, revision and other remedies are over, would not be advisable, since it would mean that continuing in service a person who has been convicted of a serious offence by a criminal court”.

(II) Disciplinary proceedings for major penalty is not barred, though the sentence is suspended by the appellate court:-

In Deputy Director of Collegiate Education Vs.S.Nagoor Meera reported in (1995) 3 SCC 377, the Hon’ble Supreme Court has observed as follows :-

“Taking proceedings for and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said Government servant - accused has been released on bail pending the appeal”.

Further, the Division Bench of the High Court, Madras in V.Natarajan and another Vs. Deputy Inspector General of Police, Thanjavur Range, Thanjavur (2005 (4) MLJ 366) has observed as follows :-

“it is well settled that merely because the sentence and conviction by a trial court have been suspended by the appellate court, it does not mean that the conviction has been washed off or obliterated” (See : S.Vasundara Vs.Canara Bank [(1997) 9 SCC 523] : Deputy Director of Collegiate Education (Admn.) Madras Vs.S.Nagoor Meera [(1995) 3 SCC 377] Vide Para- 10.

(III) Dismissal of a convicted public servant is necessary:-
Municipal Committee Bahadurgarh vs.Krishnan Behari and others [(1996) 2 MLJ 136 (SC) - 1996 (2) SCC 714].

The Hon'ble Supreme Court while discussing the nature of punishment to be awarded in a departmental action against public servant who has been convicted of a serious crime of misappropriation has observed as follows:

“In a case of such nature – indeed, in cases involving corruption, there cannot be any other punishment other than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large: it is an act of misappropriation that is relevant.”

5. Further, it is well settled that merely because the sentence and conviction by a trial court have been suspended by the appellate court, this does not mean that the conviction has been washed off or obliterated. The Hon'ble Supreme Court in Allahabad District Co-Operative Bank Ltd., Vs. Vidhya Varidh Mishra [(2004) 6 SCC 482] and Secretary, Ministry of Home affairs and another Vs.Tahir Ali khan Tyagi [J.T.2002 (Suppl.1) SC 520] has given directions that departmental proceedings be also initiated against a government servant in connection with the same charges, since it is well settled that even if an employee is acquitted in a criminal case, he can be punished in the departmental proceedings on the same charge.

6. Therefore, all the Heads of Department are requested to take note of the observation made by the Hon'ble High Court and Supreme Court of India in the aforesaid cases and take necessary follow up action immediately on receipt of Judgements or on receipt of report from the Director of Vigilance and Anti-Corruption, regarding conviction of a Public Servant in a criminal case. Further, the instructions issued in Government Memo No.2164/65-11/Pub(Ser.B), dated 11.3.1966 may also be taken note of, that Departmental action on a Public Servant who has been convicted by a Court need not be deferred, awaiting the result of the appeal preferred by him. This is the position even in respect of a case where an order of stay has been given by the appellate Court. However, if the appeal against the conviction is allowed, then the departmental enquiry or

proceedings, as the case may be, initiated based on the said conviction, can be withdrawn, if pending or appropriately reviewed, if already disposed off.

7. Similarly, immediately after the criminal case ended in acquittal in the trial court or in the criminal appeal or revision, immediate action may be taken to initiate departmental action against the public servant, if the acquittal is either on technical ground or on benefit of doubt, by following the instructions issued in GO.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.4.1988, which is as follows:-

“(1) The Criminal Proceedings and Disciplinary Proceedings undoubtedly operate in different directions. The question of continuance of domestic inquiry, after acquittal by a Criminal Court on the same charge, has come up before the Courts of Law from time to time and it has been observed by taking a view that departmental disciplinary proceedings cannot be taken after the criminal case ended in favour of the delinquent can no longer be construed as good law.

(2) Government have therefore ordered:

(i) that, in the case of an accused official acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the accused official for the same charges from which he was acquitted by the Court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings ;

and


(ii) that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted/ continued against him, the competent authority shall, within one month from the date of the Judgement (exclusive of the period required for obtaining the copy), shall send a report of such cases to the government containing justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court ”.

8. In view of the aforesaid judgement of the Hon'ble High Court, Madras and Supreme Court of India, the departments of Secretariat and the Heads of Department are requested to initiate immediate disciplinary proceedings under rule 17 (C) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the convicted public servants under their administrative control.

Yours faithfully,


22/6/12

for Principal Secretary to Government


22/06/12

Copy to:

The Vigilance Commission, Chennai-09

The Directorate of Vigilance and Anti-Corruption, Chennai-28

The Home Department, Secretariat, Chennai.

(To issue necessary instruction with
reference to TNPSS (D&A) Rules, 1955.)

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