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(A GOVT OF INDIA Enterprise)
कोल इण्डिया लिमिटेड
(भारत सरकार का उपक्रम)

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Ref. No.CIL/VIG/2016/33011/01 /1513

Dated: 27th September, 2016

CIRCULAR

Sub: Clarification regarding Departmental action when employee files appeal against conviction in criminal trial.

There appears to be doubts in some corners regarding finalization of action in Departmental proceedings when an Executive is convicted in the Court of Law and his appeal admitted by higher Court with orders for release on bail without setting aside the order of conviction in a criminal trial arising out of CBI prosecution.

In this regard, reference is drawn to the judgement of the Hon'ble Supreme Court of India in judgement in the case of Dy. Director of Collegiate Education (Admn.) Vs. S. Nagoor Meera (1995):AIR 1995 SC 1364 (1995)2 SLR 379 stipulated that clause (a) of the second proviso to Article-311(2) speaks of 'conduct which led to his conviction on a criminal charge' and there can be no question of suspending the conduct. Therefore, 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 this sentence or order is suspended by the Appellate Court or on the ground that the said accused Govt. servant has been released on bail pending the appeal. In the said judgement, it has been further held by the Hon'ble Supreme Court of India that the most appropriate course of action in all such cases arising out of conviction in the Court of Law, is to take action against the Govt. servant once he is convicted of a criminal charge and not wait for the appeal or revision, as the case may be and the other course of action i.e. wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service of a person who has been convicted of a serious offence by a Criminal Court.

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Also, the Hon'ble Supreme Court of India, in its judgement relating to criminal appeal no. 1648 of 2012 has inter alia referred to various earlier judgements pronounced by Hon'ble Supreme Court of India, viz. i) Rama Narang v. Ramesh Narang & Ors., (1995) 2 SSC 513; State of Tamil Nadu v. A. Jaganathan, AIR 1996 SC 2449; K.C. Sareen v. Central Bureau of Investigation, Chandigarh, AIR 2001 SC 3320; State of Maharashtra v. Gajanan & Anr., AIR 2004 SC 1188 ; Ravikant S. Patil v. Savabhouna S. Bagali, (2007) 1 SSC 673; Navjot Singh Sidhu v. State of Punjab & Anr., AIR 2007 SC 1003 and held that the Appellate Court in an exceptional case may put the conviction in abeyance along with the sentence but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the Court as regards the evil i.e. likely to befall him, if the said conviction is not suspended. The Court has to consider all the facts as are pleaded by the applicant in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The Court, additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done. In view of the above judgement, directions have been given by the Hon'ble Supreme Court of India to Hon'ble High Courts to exercise great caution in cases of corruption if they order to keep in abeyance the conviction.

Similarly, the note under Rule 19 of CCS(CCA) Rules clarifies that if a Government Servant is convicted on a criminal charge and the Disciplinary authority decides to issue an order imposing a penalty, there is no need to wait for the period of filing an appeal by the Government Servant. If the Government Servant has already filed an appeal, there is no need to wait for its outcome. Penalty can be imposed in either case.

In light of the above, it is can be seen that mere admission of appeal against the judgement of conviction pronounced by the CBI Court and grant of bail does not entitle the Executives to have a shield against disciplinary action as envisaged under Rule 27 or 34.1 of Coal India Executives' CDA Rules, 1978 (as amended). There is no bar on initiating, continuing and finalizing


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Disciplinary Proceeding including imposing penalty merely because appeal has been filed or bail has been granted unless the order of conviction itself has been set aside/stayed.

Moreover, even in the case of acquittal, it has also been clarified in note under Rule 19 of CCS(CCA) Rules that

“If the Court has acquitted a Government Servant stating that the allegations are not true, then it is not permissible to hold a departmental inquiry on the same allegation. If the Court has only expressed a doubt as to the correctness of the allegations, then there is no objection to holding an inquiry on the same allegations. It is also permissible to hold a departmental inquiry after acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case.”

The above clarification may be followed while conducting the Disciplinary Proceedings. This is issued with approval of Chairman, CIL.


27/9/16
(Manoj Kumar)
Chief Vigilance Officer

Distribution:

- 1) Ts to Chairman, CIL - for information.
- 2) CMD, ECL/ BCCL/CCL/WCL/SECL/MCL/NCL/CMPDIL
- 3) CVO, ECL/ BCCL/CCL/WCL/SECL/MCL/NCL/CMPDIL.
- 4) Director (P), ECL/ BCCL/CCL/WCL/SECL/MCL/NCL/CMPDI.
- 5) Shri S. Tiwari for website.