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Central Administrative Tribunal
Principal Bench

O.A.No.1240/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 22nd day of April, 2003

Prahlad Singh
Ex-UDC, DEE
Village and PO Alipur
Delhi - 110 036. ... Applicant

(By Advocate: Sh. S.N. Anand)

Vs.

The Secretary
(Disciplinary Authority)
National Council of Educational Research
& Training (NCERT)
Sri Aurobindo Marg
New Delhi - 110 016. ... Respondent

(By Advocate: Sh. R.K.Singh, through Sh. Saurav Chauhan)

O R D E R (Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' orders dated 17.9.2001 and 10.11.2001 where his request for enhancement of subsistence allowance has been rejected. Through this OA, applicant has sought quashment of the aforesaid impugned orders with direction to respondents to release arrears of enhanced subsistence allowance by an amount of 50% upon expiry of first three months period of suspension.

2. Applicant, who was working as UDC, on completion of disciplinary proceedings was placed under suspension on 21.3.2001. He preferred a representation for review of subsistence allowance and in pursuance thereof, the same has been turned down without recording any reasons and merely stated that subsistence allowance, as already fixed, would continue.

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3. Subsequently, in pursuance of the disciplinary proceedings, applicant has been compulsorily retired by an order dated 23.4.2002, and the period of suspension has been treated as not spent on duty.

4. Shri S.N.Anand, learned counsel appearing on behalf of applicant, by resorting to Rule 10(5) of the CCS (CCA) Rules, 1965 and OM dated 30.6.1966 contended that it is incumbent upon the Government to review the subsistence allowance after completion of three months period from the date of suspension of the Government servant as per FR-53, and the subsistence allowance may be increased not exceeding 50% if the suspension has been prolonged without any delay or attribution on the part of the Government servant. It is in this backdrop, contended that second review is also permissible to increase the rate of subsistence allowance as per the guide-lines.

5. In this backdrop, having regard to the aforesaid submissions, it is further contended that it was incumbent upon respondents to have statutorily reviewed after three months, the subsistence allowance of applicant which should have been enhanced by a suitable amount not exceeding 50%. As the request of enhancement has been mechanically rejected without any reasons, the same is violative of Rules and cannot be sustained.

6. On the other hand, Shri Saurav Chauhan, proxy counsel of Sh. R.N.Singh, learned counsel appearing on behalf of respondents rebutted the contentions and stated that provisions of FR-53 is not mandatory, and it is for the competent authority to vary the amount of subsistence allowance as there is

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no delay on the part of the respondents in completing the inquiry which has been culminated in the compulsory retirement, OA does not survive. It is however, on merits, contended that it is not incumbent upon the authorities to suo moto review the subsistence allowance after expiry of three months.

7. I have carefully considered the rival contentions of the parties and perused the material on record. Applicant was placed under suspension on contemplating the provisions which finally initiated and culminated into penalty of compulsory retirement. This has not put an end to the grievance contained in the present OA as it relates to the payment of enhancement of subsistence allowance.

8. As per Rule 10(5)(c) of the CCS (CCA) Rules, 1965, an order of suspension can be modified or reviewed by the competent authority. Moreover, as per the instructions of DoPT contained in OMs dated 23.8.1979 and 16.2.1959 it is obligatory under FR 53 at the end of three months as per the date of suspension to review subsistence allowance and if the delay is not attributable to the applicant, the same is to be enhanced not exceeding 50%. However, as per FR 54(1)(2) though no subsequent review is to be made to competent authority is within the jurisdiction to increase or decrease the subsistence allowance and subsequent review can be made at any time at the discretion of the competent authority. Moreover, where the suspension has been prolonged for reasons not directly attributable to the Government servant without adoption of the dilatory tactics by him, the same is to be increased to the 50% as per the order dated 30.6.1966.

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9. In the light of the provisions the impugned orders passed by respondents cannot be sustained. As the request of applicant for enhancement of subsistence allowance has been turned down without passing a speaking order as the suspension has not been prolonged, due to the fault of applicant or any dilatory tactics adopted by him, subsistence allowance should have been increased to 50% immediately after expiry of three months period of suspension, as the same has not been done and the orders passed are without application of mind and no reasons have been recorded, the same are not legally sustainable.

10. In the result, for the foregoing reasons, impugned orders are quashed and set-aside. Respondents are directed to reconsider the enhancement of subsistence allowance of applicant immediately after expiry of three months from the date of suspension and in accordance with rules, and if it is so done, applicant shall be entitled to pay the arrears in accordance with law. The aforesaid review/reconsideration would be by way of a detailed and speaking order to be passed by the respondents within two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

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