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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 548 of 2002

New Delhi, this the 5th day of February, 2003

March 1st

HON'BLE MR. KULDIP SINGH, MEMBER (JUDG.)
HON'BLE MR. C.S. CHADHA, MEMBER (A)

Shri J.S. Thakur
LDC Office of the Registrar,
New Paper of India,
West Block-8,
Wing No.2, R.K. Puram,
New Delhi.

-APPLICANTS

(By Advocate: Shri M.L. Chawla)

Versus

1. Union of India
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi.
2. Registrar of News Paper of India
(Ministry of Information & Broadcasting)
West Block 8,
Wing No.2, R.K. Puram,
New Delhi.

-RESPONDENTS

(By Advocate: Shri R.N. Singh)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judg.)

The applicant has assailed an order dated 9.4.2001 vide which his period of suspension w.e.f. 29.3.1982 to 9.2.1990 was treated as period not spent on duty and further treating the subsequent period from 10.2.1990 to 10.12.1996 as period spent on duty.

2. The applicant submitted his revision petition for reviewing the order and the same had been rejected vide order dated 27.11.2001. The said order passed in revision is also assailed.

3. The facts in brief are that the applicant was appointed as LDC in the office of respondent No.2 at

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Shimla in the year 1965 and he was promoted as UDC and was working at Delhi in the same capacity. On 29.3.82, the applicant is stated to have been placed under suspension on the ground of some contemplated disciplinary proceedings. The said suspension continued till 10.12.1996 for the reason best known to the respondents for no fault of the applicant. But during the suspension period, no subsistence allowance was paid to the applicant. The applicant approached the Tribunal vide OA No.1272/HP of 1994 wherein his OA was allowed and the respondents released his subsistence allowance amounting to Rs.1, 24, 458/-. The applicant submits that in the impugned order 9.4.2001 the appellate authority has observed that since there was delay upto 9.2.1990 for the proceedings with the departmental enquiry which was attributed by the charged officer, therefore, the suspension period from 29.3.82 to 9.2.90 be treated as period not spent on duty.

4. The applicant further submits that since the applicant was not paid any paisa towards his subsistence allowance during his unlawful suspension had only fallen back upon his family and ancestral home for his sustenance and livelihood in the work of no other source of income. As the applicant was residing in a village so he could not afford to be out of village.

5. The counsel for the applicant has also relied upon a judgment in the case of Capt. M. Pal Anthony Vs Bharat Gold Mines Ltd. and Another reported in AIR 1999 SC 1416 wherein it has been held that non-payment of

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subsistence allowance during the period of suspension violates the fundamental right to life and because of the penury occasioned by non-payment of subsistence allowance employee was unable to undertake journey to attend departmental proceedings so the departmental proceedings stand vitiated. ~

6. In the grounds to challenge the impugned order the applicant again insisted that the applicant could not have been allowed to remain without subsistence allowance during the period of suspension.

7. It is further stated that the department could not have withhold the payment of subsistence allowance to their employee during the period of suspension and cannot expect him to simultaneously attend the enquiry.

8. The applicant has assailed the orders of the disciplinary authority as well as of the appellate authority on the ground of non-payment of subsistence allowance alone. Based on these grounds, the applicant has prayed for the following reliefs:-

(i) To quash and set aside the impugned orders of rejection of revision petition, order by appellate authority together with the order of punishment passed by disciplinary authority in the third enquiry held by the respondents.

(ii) To direct the respondent to regulate period of suspension in terms of Supreme Court order in Capt. M. Pal Anthony's case (AIR 1416); and treat the

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entire period of suspension as duty in view of the facts and grounds taken up in para 4 and 5 together with their sub-paras.

(iii) To further direct the respondents to pay interest on the salary/subsistence allowance for the period from 29.3.1982 till 10.11.1996 forthwith from the date they fell due.

(iv) To further direct the respondents to release the outstanding salary for the month of November, 1981 together with the salary of March, 1982 which has not been paid till date.

(v) To direct the respondents to make payment of the arrears as above and all other dues flowing therefrom with penal interest @ 18%.

9. Respondents are contesting the OA. They have filed their reply. The respondents pleaded that the appellate authority as well as the disciplinary authority had gone through all details and the grounds taken by the applicant in the appeal and it is only after proper examination decided the applicant as guilty of the offence and hence ordered treatment of his suspension period from 29.3.1982 to 9.2.1990 as not spent on duty and the reasons are clearly indicated in the order dated 9.4.2001.

10. It is further submitted that the reasons for suspension of the applicant were fully explained in the charge-sheet issued to the applicant vide Memorandum

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dated 15.6.1982 which he continued to evade till 1986 when he was finally located through Police Authorities at Shimla. It is also submitted that applicant's continued suspension can solely be attributed to the non-cooperative attitude of the applicant vis-a-vis the Inquiry Committee instituted in 1987.

11. As regards non-payment of subsistence allowance is concerned it is stated that the Headquarters of the applicant is declared at Delhi but the applicant left the Headquarters without permission and also did not submit the certificate required under FR 53. The sanction letter for subsistence allowance was sent at his known address at Delhi which was received back undelivered.

12. As regards the revocation of suspension is concerned, the the non-cooperative attitude of the applicant which resulted for non-review of revocation of suspension.

13. It is further submitted that the enquiry was held in accordance with the rules after supplying all the documents.

14. As regards the non payment of subsistence allowance, it is stated that the applicant should not have left the headquarters and consequently should have given the requisite certificate under FR 53 for getting the subsistence allowance.



15. As regards non-payment of salary for the month of March, 1982, it is submitted that the applicant has made a concocted story which has no force and submitted that the OA has no merits and the same has to be dismissed. The applicant had left Delhi before his salary was drawn, which was ultimately deposited in treasury as the applicant was not available.

16. The applicant thereafter filed a rejoinder which was also replied by filing a second counter/additional-reply to the rejoinder.

17. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter.

18. The only ground taken up by the applicant in this petition to challenge the impugned order is that since the applicant was not paid subsistence allowance during the period of suspension so the enquiry conducted against the applicant stands vitiated and submitted that the impugned orders passed by the respondents also cannot be sustained and in support of his contention the learned counsel for the applicant has referred to a judgment reported in 1999 (1) SC Service Law Judgments entitled as Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another wherein in paragraph 45 it has been observed as under:-

" 33. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte



proceedings against him, were of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stands vitiated (emphasis supplied)".

19. Since the respondents have taken up a plea that applicant had not furnished the requisite certificates of his non-employment elsewhere so that was also one of the ground that the subsistence allowance was not paid.

20. To rebut this the learned counsel for the applicant has referred to another judgment reported in ATJ 2002(3) page 454 entitled as Anwarun Nisha Khatoon Vs. State of Bihar and Others wherein it has been held as under:-

"Bihar Service Code - Rule 96(2) - Suspension - Subsistence Allowance - Suspension ordered in 1967 - Employee died in 1990 - Subsistence allowance denied on the ground that non-serving certificate in terms of Rule 96(2) not furnished - At no stage authorities had asked the appellant to give such a certificate - Subsistence allowance cannot be denied on this ground".

21. The court after relying upon the authority of the Patna High Court in the case of Ganesh Ram Vs. State of Bihar held in the following manner:-

"9. In our view, this authority, far from assisting the respondent, is against them. This authority shows that there is no requirement to mark attendance. To us also no rule could be shown which required to suspended employee to mark attendance. The respondents can at the most ask for a certificate that the

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appellant's husband was not engaged in any other employment, business, profession or vocation. The appellant's husband having died, he could not have furnished such a certificate. At no stage have the respondents asked the appellant to give such a certificate. Thus, the grant of subsistence allowance can not be denied on the ground that such a certificate is not given.

10. This view of ours is supported by an authority of this Court in the case of Jagdamba Prasad Shukla V. State of U.P. reported in (2000) 7 SCC 90. In this case, on identical facts, it has been held that without asking for such a certificate the State cannot reject a claim for subsistence allowance (emphasis allowed)".

22. As regards the plea of the applicant about non-payment of subsistence allowance is concerned, the respondents have contended that they had made their best efforts to search the applicant at Shimla addresss which the applicant has himself given when he had made nomination with regard to GPF, CGEIS etc. which was Village and Post Office Beolia where the charge-sheet was despatched to him by the respondents after his suspension and the applicant had never declared that his wife and family were staying separately at Shimla. The wife of the applicant had also made representation on behalf of the applicant through Village and P.O. Beolia and ultimately Police Authorities located him at Beolia but still the notices of charge-sheet sent at Beolia were returned back without proper service, so the respondents department had to request the police authorities to locate the applicant.

23. The counsel for the respondents submitted that the envelope containing the charge-sheet was sent by registered post and was received back with the remarks "Is naam ka admi Beolia mein nahia rahata. Delhi mein

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rahata hai. Atah wahan kae pata par tafshish ho". It this is read carefully then the postal authorities might not have written "Delhi mean Rehta hai". Another envelope sent at his address was received back with the remarks of postal authorities "har chand koshish ki gai. Rajistry paane wala nahin milta. Unki patan se maloom hua ki vah yahaan par nahin his. Delhi chala gaya hai".

24. The counsel for the respondents further contended that the applicant when left his application then also he had not given any address as to where the correspondence could be sent to him. Besides that in between the period the applicant had been filing litigation against the department which can be seen from record as he had filed a case before the Civil Court at Shimla and thereafter he had also filed an appeal before the District Judge, Shimla but he was not coming forward to receive the charge-sheet.

25. The respondents have also placed on record Annexure A-4 to the counter-affidavit which is a letter from Assistant District Attorney, Shimla which says that the appeal filed by the applicant is fixed for hearing on 31.12.1983 and in the next line it has been written that the same has been dismissed vide order dated 31.12.1983. From the above it is not clear how when the date was fixed for hearing on 31.12.1983, the case has been decided on the same day. Thus there appears to be some contradiction in the letter.

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26. Respondents further submitted that the applicant has been filing cases against the respondents. However, on going through the judgment given by the Sub Judge Shimla on 30.7.83 which says that a suit was instituted by the applicant on 16.3.82. The suit was filed against the respondents itself. The appeal was decided on 31.12.1983. The applicant who had left the office in the year 1982 had been prosecuting his cases in Shimla but neither furnished his address at Delhi nor tried to come to his Office Headquarters at Delhi to enquire about the position of his case or to make any enquiry about the service. The letter sent to him as per his own address was being received back undelivered and particularly when his wife was reporting that the applicant had gone to Delhi, which shows that he was intentionally not receiving the letters issued by the respondents. Thus there does not appear to be any lapse on the part of the respondents in any way to serve the charge-sheet upon the applicant and when the applicant was not himself contacting the office nor making any grievance about the payment of subsistence allowance so where the respondents had to pay the subsistence allowance that itself remains a misery so the respondents could not have paid the subsistence allowance to the applicant in that circumstances.

27. However, when the applicant filed an OA before the Chandigarh Bench wherein the directions were made to make payments, the respondents immediately complied with the same.

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28. Now coming to the judgments cited by the applicant in the case of M. Paul Anthony (Supra) it was observed that since in the case before the Hon'ble Supreme Court the appellant was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by the applicant on account of his illness was duly supported by medical certificates was refused resulting in ex-parte proceedings against him. The court came to the conclusion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. But in this case the applicant did not on his own contact the office after he left in the year 1982 despite the fact that his Headquarter is at Shimla nor he had ever asked for subsistence allowance and when he filed an OA claiming subsistence allowance which was allowed in his favour, then the payment was made to him. It is not the case of the applicant in his pleadings that on account of penury circumstances he could not attend departmental proceedings.

29. The applicant nowhere even before the departmental authorities had ever pleaded that because of penury circumstances he was unable to attend the proceedings so the mere fact that he was not paid subsistence allowance at an appropriate time, will not give him a cause to challenge the impugned orders.

30. As regards non-furnishing of certificate with regard to his employment else where, the counsel for the applicant has also referred to another judgment in Anwarun Njisha Khatton (Supra). The perusal of the paragraph quoted above (Supra) would show that in the

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case of Khotton (Supra) the department at no stage had asked the appellant to give a certificate of non-service whereas in the present case the department did show a letter calling upon the applicant to furnish a certificate as required under FR 53 regarding his non-service elsewhere and it has been so even pleaded in the counter-affidavit which fact is not denied.

31. Rule FR 53 sub-rule (2) provides that "No payment under sub-rule (1) shall be made unless the Government service furnished a certificate that he is not engaged in any other employment, business, profession or vocation".

32. Hence both the judgments relied upon by the applicant are not applicable on the facts of the present case.

33. The next contention raised by the applicant is that vide an order dated 24.5.95 the appellate authority had ordered for a de novo enquiry when it had found certain defects in the order passed by the disciplinary authority, i.e., since the charge-sheet was issued by the Deputy Presss Registrar who is a subordinate authority than the appointing authority, which is Press Registrar.

34. The counsel for the applicant then submitted that the de novo enquiry could not have been ordered. The appellate authority could have ordered for a further evidence but certainly de novo enquiry could not have been ordered.

35. In our view this contention of the applicant again has no merits because first of all the applicant cannot be allowed to raise this contention as there was no such ground taken in paragraph 5 to the assail the order in question. Moreover, since the appellate

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authority had found that the charge-sheet was not issued by the competent authority and vide an order dated 24.5.95 a de novo enquiry was initiated, the appellate authority only intended that the fresh charge-sheet be issued by the competent authority.

36. No other contention has been raised before us.

37. In view of the above, OA does not call for any interference and the same is dismissed. No costs.


(C.S. CHADDA)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JO)

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