

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1707/2002

10

New Delhi, this the 10th day of July, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Om Prakash
S/o Late Sh. Lok Ram
R/o Type III/37
NCERT Staff Quarters
Plot No.9, Pocket 6
Nasirpur (Dwarka Phase I)
New Delhi - 110 045.

And employed as

Editorial Assistant in the
National Council of Educational
Research and Training
Sri Aurobindo Marg, New Delhi - 110 016.

.....Applicant

(By Advocate Sh. Subodh Pathak with Applicant in person)

V E R S U S

National Council of Educational
Research and Training
through its Director
Sri Aurobindo Marg
New Delhi - 110 016.

...Respondent

(By Advocate Ms. Deepa Rai,
proxy for Sh. Saurabh Chauhan)

O R D E R (ORAL)

Shri Shanker Raju.

Heard the parties.

2. Applicant on account of arrest and detention in custody being implicated in a criminal case instituted vide FIR No. 32/99 under Section 420, 468, 471 and 120 of IPC, applicant was placed under deemed suspension by an order dated 31-3-2000/6-4-2000. Applicant in pursuance of bail granted by Delhi High Court was released from custody on 10-7-2000. He prayed for enhancement of subsistence allowance as well as revocation of his suspension.

-2/-

3. By an order dated 7-2-2002, request of the applicant for enhancement of subsistence allowance w.e.f. 9-9-2000 was turned down with an observation that he would be continue to get allowance at the same level in continuation to earlier order dated 31-3-2000/6-4-2000.

4. Ld. counsel of the applicant contends that as required under FR 53 (1) (ii)(ii), while reducing the amount or rejecting the application for increase in subsistence allowance, the competent authority is mandated to record in writing that the suspension has been prolonged or not directly attributable to the Govt. servant.

5. In the aforesaid backdrop, it is stated that as impugned order contains no reasons it is not a valid compliance of the aforesaid and is liable to be set aside.

6. It is further stated by ld. counsel of the applicant that in view of the decision of the High Court of Delhi in Rajiv Kumar Vs. UOI in CWP No. 4745/2001 decided on 31-5-2002 that as soon as the applicant, who has been placed under deemed suspension, released from the custody, order passed placing him under deemed suspension no longer survives and for continuation of suspension further, an order under Rule 10 (1) (b) of the CCS (CCA) Rules, 1965 is to be issued.

7. On the other hand i.e. proxy counsel for the respondents vehemently opposed the contentions and stated that in pursuance of deemed suspension simultaneously with the criminal trial, a disciplinary proceeding was also initiated which was delayed by the applicant by filing civil suit seeking stay of the disciplinary proceedings, in pursuance of which proceedings were stalled. As such delay is attributable to the applicant. Accordingly, decision of the respondents not to increase the subsistence allowance is valid in law.

8. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as second plea of the applicant regarding deemed suspension coming to an end is concerned, on release of a Govt. servant from custody, the same has not been made part of the aforesaid OA. As this plea is a mixed question of fact in law, the same cannot be gone into in this OA without a specific plea. However, liberty is accorded to the applicant to separately raise this issue by way of representation before the respondents in accordance with law.

9. In so far as Annexure 'A', whereby the request of the applicant for enhancement of subsistence allowance w.e.f. 9-9-2000 i.e. six months from the original order is concerned, the same ex-facie, appears to be a non-speaking order. As per FR 53 (1) (ii)(ii) ibid, the competent authority i.e. appointing authority is mandated to pass a reasoned order recording in writing that prolonged suspension

is either attributable or otherwise on part of the Govt. servant to deny him or to accord subsistence allowance.

10. As there has been no valid compliance of FR 53 (1) (ii) (ii) order is not sustainable in law and is accordingly set aside.

11. In view of the above, OA is partly allowed. In so far as the request of the applicant for revocation of his suspension is concerned, liberty is accorded to the applicant to file separate representation. However, respondents are directed to re-consider the request of the applicant for enhancement of subsistence allowance in accordance with rules ibid by passing a detailed and speaking order as per Rules within one month from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

/vks/