

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2328/2001

W

New Delhi this the 28th day of August, 2002.

Hon'ble Mr. Shanker Raju, Member (Judl.)

Mahender Singh Khatri,
S/o Shri Amar Singh Khatri,
R/o V. & P.O. Bankner,
Delhi.

-Applicant

(By Advocate Shri Gyan Prakash)

-Versus-

1. NCT of Delhi, through
Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg, Delhi-54.
2. The Secretary (Finance),
Principal Accounts Office,
Govt. of NCT of Delhi,
Mori Gate, Delhi-6.

-Respondents

(By Advocate Mrs. Sumedha Sharma)

O R D E R

In this OA respondents' order dated 14.12.2000 is impugned whereby request of the applicant for enhancement of subsistence allowance to 75% has been rejected.

2. Applicant at the outset has not pressed the relief of revocation of suspension and resumption of duties.
3. Applicant who was working as a Senior Clerk was involved in a criminal case under Prevention of Corruption Act vide FIR No. RC-32(A)/97-DLI. This case is pending before the court of MM. Applicant was placed under suspension on account of his detention in custody for a period exceeding 48 hours under sub rule (2) of Rule 10 of the CCS (CCA) Rules, 1965. Subsequently a chargesheet was filed in the court of Sub Judge on 24.9.99 and the trial is in progress. Applicant through his representation prayed for increase in subsistence allowance which was turned down by an order dated 14.12.2000, giving rise to the present OA.

4. During the pendency of the OA by an order dated 29.10.2001 subsistence allowance of the applicant has been increased to 50% with an observation that prolongation of the judicial proceedings against the applicant and consequent suspension period is not due to the reasons directly attributable to the applicant. By letter dated 22.5.2002 date of retirement of the applicant, i.e., 30.9.2002, has been notified.

5. Sh. Gyan Prakash Sharma, appearing for the applicant contended that having found delay in trial and suspension period not attributable to the applicant it was incumbent upon the respondents to have reviewed the subsistence allowance of the applicant and its increase to 50% immediately after three months from the date of suspension, i.e., in the year 1997 itself, as per FR 53 (1) (ii) (a) (i). It is further contended that a retrospective revision is permissible in so far as increase in the subsistence allowance is concerned as per OM dated 17.6.58 and 13.9.74. Shri Gyan Prakash further stated that a second review is permissible as per OM dated 30.6.66 and as the applicant is participating in the trial and the delay is not at all attributable to him the subsistence allowance should have been increased to 75%. He relied upon a decision of the Apex Court in P.L. Shah v. Union of India, ATR 1989 (1) SC 683 to contend that the subsistence allowance has relevance to the bare subsistence and as the prices of necessities of life are increasing day by day that the government servant is forbidden to engage in any other activity the amount of subsistence allowance should have been reviewed from time to time. He also placed reliance on a decision of the Apex Court in Umesh Chandr Misra v. Union of India & Ors., ATJ 1993 (1) 81 to contend that he was placed under suspension by Secretary, Finance, the review which is to be done by a higher authority and in the instant case the Controller of Accounts who is undisputedly a lower authority than the Secretary has no jurisdiction to pass an order for review. The aforesaid authority has acted

without jurisdiction. Sh. Gyan Prakash has further placed reliance on a decision of the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., 1999 (1) SCSLJ 429 to contend that as enshrined under Article 21^u of the Constitution of India it is the fundamental right of the Govt. servant to be ~~paid~~^{paid} with the subsistence allowance and its timely revision.

6. It is in this conspectus stated that the subsistence allowance should have been increased to 75% and 50% immediately on expiry of three months from the date of suspension in 1997.

7. Ms. Sumedha Sharma, learned coun-sel appearing for the respondents denied the contentions and stated that in view of the provisions of FR 53 it is the appointing authroity who is competent to pass an order of review of subsistence allowance and as Controller is the appointing authority the order passed is within jurisdiction. It is further stated that as the applicant was involved in a serious charge of acceptance of bribe on account of compensation accorded to one P.S. Adhikari on account of death of his sister Ms. Sandhya who was killed in Oman and applicant was placed under suspension on 2.5.97 and while reviewing the case it was not considered fit to revoke the suspension. In so far as the issue of subsistence allowance is concerned, it is stated that the subsistence allowance has been increased to 50% as originally sanctioned.

8. In rejoinder, applicant has re-iterated his pleas taken in the OA.

9. I have carefully considered the rival contentions of the parties and perused the material on record. In view of the decision of the Apex Court in P.L. Shah's case (supra) though the order of suspension is not a punishment order but the object

of subsistence allowance, which as per its nomenclature is bare subsistence keeping in view the high rise in prices and inflation. The same should be reviewed timely. It is not disputed that the delay in prolongation of trial as well as suspension has not been attributed to the applicant in view of the findings of the respondents dated 29.10.2001.

10. FR 53 (1) (ii) (i) makes it incumbent upon the appointing authority to increase in subsistence allowance not exceeding 50% during the first three months, if it is in the opinion of the authority the period of suspension has not been pulled on. As per MHA OM dated 23.8.79 review of subsistence allowance should be made at the end of three months from the suspension and it is obligatory upon the competent authority to review it, if the period of suspension is likely to exceed six months as per OM of 1959. A second review and subsequent review is also permissible and as per the decision of the respondents the same shall be taken up at the discretion of the competent authority as per rules.

11. Although, admittedly the delay is not found attributable to the applicant but yet in 2000 vide impugned order the respondents have rejected the request of the applicant for enhancement of the subsistence allowance but subsequently increased it w.e.f. 29.10.2001. It was incumbent upon the respondents to have reviewed it timely as per the provisions of FR 53 and Government of India's instructions which makes it obligatory upon them to review it after expiry of three months i.e. in the present case from 8.8.97 having not done the same respondents have flouted these Government of India's instructions which are supplement to FR 53.

12. Moreover, though the orders revising the subsistence allowance should not be given effect to in case the variation of subsistence allowance is done in FR 53 after quite some time from the expiry of three months and if the authority is satisfied

(16)

that the variation is to be given retrospective effect reasons are to be recorded in writing and the same are binding as per OM dated 6.5.58 as well as 17.9.74. In P.L. Shah's case (supra) not only the retrospective revision was allowed but interest was also accorded.

13. In so far as the request of the applicant for revision of the subsistence allowance to 75% is concerned, the same is to be done as per OM dated 30.6.66 where the second review is permissible though not provided under FR 53 which is at the discretion of the competent authority.

14. In this view of the matter, I am of the considered view that the increase in subsistence allowance w.e.f. 29.10.2001 cannot be countenanced and a retrospective review should be made by the respondents immediately on expiry of three months from the date of placement of applicant under suspension which is in consonance with the FR 53 and the guidelines laid thereon. From the perusal of the record submitted by the respondents it is clear that the proposal for increase in subsistence allowance has been initiated by the respondents but the same has not been done and ultimately in 2001 the same has been reviewed without any fault of the applicant.

15. In the result, though the OA is disposed of with the direction to the respondents to consider reviewing the subsistence allowance of the applicant retrospectively from 8.8.97 as per the rules and observations made above by passing a detailed and speaking order. In that event the applicant shall also be entitled to all consequential benefits. The respondents are further directed to consider



the case of the applicant for increase of subsistence allowance in a second review as per the guidelines to 75%. Respondents are directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

'San.'