

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

(3)

O.A.No.947/2001

Hon'ble Shri M.P.Singh, Member(Admn.)  
Hon'ble Shri Shanker Raju, Member (Judicial)

New Delhi, this the 27th day of August, 2001

Mohinder Kumar  
s/o Shri Nabhu Singh  
r/o K-985, Jahangir Puri  
Delhi - 110 033.

... Applicant

(By Advocate: Shri S.K.Gupta)

Vs.

1. Union of India through  
Secretary  
Department of Posts  
Ministry of Communication  
Dak Bhawan  
New Delhi - 110 001.
  2. Director  
Postal Services  
Delhi Circle  
Megh Doot Bhawan  
New Delhi.
  3. Sr. Superintendent of Post Offices  
New Delhi South - East Division  
New Delhi - 110 003.
  4. Sr. Post Master  
Lodhi Road (HPO)  
New Delhi - 110 003.
- ... Respondents

(By Advocate: Ms. Harvinder Oberai)

O R D E R (Oral)

By Shri M.P.Singh, Member (Admnv.):

The applicant, in this OA, has sought the following reliefs:

"This Hon'ble Tribunal may be pleased:-

- (i) to quash and set aside the action of the respondents in not fixing the pay of the applicant in revised scale and not enhancing the subsistence allowance.
- (ii) to direct the respondents to re-fix the pay of the applicant in terms of Vth Pay Commission's recommendations in the scale of Rs.4000-6000 and also enhance the subsistence allowance of



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the applicant upto 75% w.e.f. 2.2.96  
and release the arrears with interest  
@ 18% p.a.

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(iii) to pass such other and further  
order which this Hon'ble Tribunal may  
deem fit and proper"

2. The brief facts of the case are that the applicant was working as Postal Assistant in the Department of Posts at Okhla Industrial Estate Post Office, New Delhi, ~~who has been~~ <sup>and was</sup> placed under suspension vide order dated 2.11.1995 with immediate effect on the ground that some disciplinary proceedings against him were contemplated.

3. According to the applicant, his pay should have been revised on the recommendations of the Fifth Central Pay Commission and accordingly subsistence allowances should have also been increased from 50% to 75% as the delay in conclusion of departmental inquiry is not attributable upon the applicant as provided under the Rules.

4. The applicant has submitted his representation to Respondents No.2 and 3 requesting them to grant him aforesaid benefits regarding increase of subsistence allowance and fixation of pay in terms of the Fifth Central Pay Commission's recommendations. The aforesaid request of the applicant has been rejected by Respondent No.4 vide letter dated 31.3.1998. Aggrieved by this he has filed the present OA seeking the aforesaid reliefs.

5. The respondents have contested the case of the applicant and stated that the applicant is involved in a fraud case of MO Issue to the tune of

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Rs.14,84,306/- while he was working as Treasurer in Kalkaji Post Office, New Delhi. A criminal case against the applicant has also been filed vide FIR No.53/96 dated 25.1.1996 under section 409/420 Indian Penal Code which is under trial in the Hon'ble Court of Sh. Parveen Kumar, MM, Patiala House Courts. In the meantime, the disciplinary proceedings have been initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The case of the applicant has been reviewed by the respondents vide Memo dated 11.1.2001 and keeping in view the provisions of FR-53 and also the gravity of charges levelled in both the cases, it was ordered that the applicant shall continue to remain under suspension and the status-quo be maintained on subsistence allowance. According to the respondents, no case has been made out by the applicant, the present OA may be dismissed.

6. We have heard both the learned counsel and perused the pleadings available on record. During the course of the arguments the learned counsel for the applicant drew our attention to the Judgement of this Tribunal dated 26.7.2000 in the case of Shri Sulekh Chand Sharma Vs. Union of India & Others (OA No.2463/1999). He submitted that the applicant's case is squarely covered by this Judgement and the OA therefore be allowed. On the other hand, the learned counsel for the respondents contended that the applicant is not entitled for the revised pay scale and similarly he is also not entitled for enhancement of the subsistence allowance from 50% to 75%. She



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drew our attention to Rule 7 of CCS (Revised Pay) Rules, 1997 and she pointed out that according to Note-3 below Rule 7 it has been mentioned as under:

"Note 3:- Where a Government servant is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he joins duty. In case of Government servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

7. The learned counsel for the respondents has also drawn our attention to FR-53(2)(a) which reads as under:

"2. Cases in which the revised scale of pay takes effect from a date falling within the period of suspension.:

(a) Under suspension a Government servant retains a lien on his substantive post. As the expression 'holder of a post' occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may not be actually holding the post, such a Government servant should be allowed the option under FR-23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not."

8. The learned counsel for the respondents lastly drew our attention to Rule 6(1)(ii) of CCS (Revised Pay) Rules, 1997 which reads as under:

"where a Government servant is under suspension on the 1st day of January, 1996, the option may be exercised within three months of the date of



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(a)

his return to his duty if that date is later than the date prescribed in this sub-rule."

9. As regards the second and subsequent review of the suspension the learned counsel for the respondents drew our attention to FR 53 (3) (d) which reads as under:

"Though the proviso to FR 54(I)(ii)(a) does not specifically provide for a second or subsequent review, there is no objection to such review(s) being made by the competent authority. Such authority shall be competent to pass orders to increase or decrease the rate of subsistence allowance upto fifty per cent of the amount of subsistence allowance initially granted, according to the circumstances of each case. A second or subsequent review can be made at any time at the discretion of the competent authority."

10. The learned counsel for the respondents therefore submits that in view of the aforesaid Rules position, the applicant is not entitled for the revised pay scale and consequent increase in the subsistence allowance also.

11. After hearing both the learned counsel and perusing the records, we are of the considered view that the present OA is squarely covered by the Judgement (OA No.2463/1999) supra dated 26.7.2000. In the aforesaid judgement, the Tribunal has discussed the ratio of Apex Court's Judgement in the case of Umesh Chandra Mishra Vs. Union of India & Others, (1993) 24 ATC 243. On the basis of the above Judgement of the Apex Court, the OA 2463/1999 was allowed. The operative portion of the Judgement of the Tribunal is as under:

*[Signature]*

"5. The ratio in the case of Umesh Chandra Misra (supra) is applicable to the facts of the instant OA and the subsistence allowance of the applicant has to be computed on the basis of his pay as reviewed with effect from 1.1.1996 as per the scales recommended by the Fifth Pay Commission. Thus in our view, the applicant is entitled to subsistence allowance at the rate of 50% of the salary on the basis of the revised pay scales recommended by the Fifth Pay Commission and at the rate of 75% of the salary from 16.10.1997 onwards on the basis of the revised pay scale."

12. In view of the above, the present OA is squarely covered by the aforesaid Judgement of this Tribunal in OA No.2463/1999. The OA is allowed by directing the respondents to re-fix the pay of the applicant in terms of the Fifth Central Pay Commission's recommendations and also direct the respondents to review the case of the applicant with regard to the enhancement of the subsistence allowance by passing a speaking and reasoned order within a period of three months from the date of receipt of a copy of this order. No costs.

  
(SHANKER RAJU)  
MEMBER(J)

  
(M.P. SINGH)  
MEMBER(A)