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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.119/99

New Delhi this the 16th day of December, 1999.

HON'BLE MR. V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Mrs. S.S. Bellani

...Applicant

✓ (By Advocate Mr. S.K. Gupta)

-Versus-

Union of India & Others

...Respondents

✓ (By Advocate Shri V.P. Uppal)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of
the Tribunal?

~~NO~~

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(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN(J)

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OA-119/99

New Delhi this the 16th day of December, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. R.K. AHOOJA, MEMBER (ADMN.)

Mrs. S.G. Bellani,
I.T.O. (under suspension)
R/o I-C, Masjid Moth,
D.D.A. Flats, Phase-I,
New Delhi.

...Applicant

(By Advocate Shri S.K. Gupta)

-Versus-

1. Union of India through
Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

2. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi.

3. Chief Commissioner of Income-Tax,
I.T.O. (Hqrs.,) C.R. Building,
I.P. Estate,
New Delhi.

...Respondents

(By Advocate Shri V.P. Uppal)

ORDER

By Reddy, J.-

The applicant is aggrieved by the action of the respondents in not revoking the order placing him under suspension and not revising the subsistence allowance as per the revised pay scale implemented pursuant to the recommendations of the Fifth Pay Commission w.e.f. 1.1.96.

2. The applicant is an Income Tax Officer in the office of the Chief Commissioner of Income Tax, New Delhi. She was placed under suspension by an order dated 30.4.92 on the ground that disciplinary




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proceedings were contemplated against her. She filed a representation on 4.11.92 praying for revocation of the suspension, stating that she was not responsible for the missing of 20 vouchers and voucher book which were not in her custody and denying other allegations. The applicant was implicated in a number of cases pertaining to the wrongful utilisation of the refund vouchers. The cases were pending before the Metropolitan Magistrate, Patiala House, New Delhi. It was stated that though in similar cases suspension orders have been revoked, she has been discriminated. The applicant is being continued under suspension. The applicant also submitted a representation to revoke the suspension, on the ground of delay and for revision of subsistence allowance consequent to the revision of pay scales in pursuance of the recommendations of the Fifth Pay Commission w.e.f. 1.1.96. But the respondents had not taken any action for such revision.

3. It is now contended by the learned counsel for the applicant that even after seven years the applicant is continued under suspension. It is further contended that the applicant is entitled under law for revision of subsistence allowance on the basis of the revised pay scale w.e.f. 1.1.96.

4. It is, however, the case of the respondents that in view of the serious nature of charges and in view of the fact that she was being prosecuted in criminal cases which were pending trial in a criminal court, the suspension of the applicant cannot be revoked till the conclusion of the criminal cases.



It is also submitted that the applicant is not entitled for the revision of the subsistence allowance in view of the C.C.S. (Revised) Pay Rules, 1997.

5. We have given careful consideration of the arguments advanced and perused the pleadings and other records. The facts are not in dispute in this case. The applicant has been placed under suspension in 1992 as disciplinary proceedings were contemplated against him. It is also not disputed that the applicant has been facing several criminal cases charges of under Sections 420, 407, 468 and 380 IPC. All the cases are still pending trial before the M.M. Patiala House, New Delhi. It is, however, stated that no charge has been framed so far in the criminal cases. From a perusal of the suspension order, it is clear that the applicant has been placed under suspension under sub rule (1) of Rule 10 of the CCS (CCA) Rules, 1965. Rule 10 (1) (b) enables the competent authority to place the Government servant under suspension where a case against him in respect of a criminal offence is under investigation, enquiry or trial. In view of this rule the action of the respondents in placing the applicant under suspension pending trial of criminal cases against her is not unjustified.

6. The main contention advanced by the learned counsel for the applicant is that it is not permissible under law to keep her under suspension for a period of over seven years. He has cited several decisions on this point. However, before discussing them it is necessary to consider the settled law on this

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aspect;

In Collector of Central Excise, Ahmedabad v. Television & Components Pvt. Ltd., JT 1998 (8) SC 16 it has been laid down that:

"It is no doubt true that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as to whether there is undue delay in initiation of disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case."

On examination of the facts in that case, it was found that the Corporation was awaiting the CBI investigation report. In the circumstances, the Court held that the High Court was not right in quashing the charge-memo on the ground delay.

In Allahabad Bank & Anr. v. Deepak Kumar Bhola, (1997) 4 SCC 1 after investigation was conducted by the CBI which resulted in filing a chargesheet alleging various offences having been committed by the respondent therein it was held that the mere fact that nearly 10 years have elapsed since the chargesheet was filed, can be no ground for allowing the respondent to come back to duty on sensitive post in the Bank, unless he is exonerated of the charge.

The Supreme Court again in U.P. Rajya Krishi Utpadan Mandi Parishad & Others v. Sanjiv Rajan, 1993 (25) ATC 764 held:



"Ordinarily, when there is an accusation of defalcation of the monies, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of."

In the light of the above well settled law, it is clear that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question whether, in a particular case there is delay and delay vitiated the proceedings, has to be decided in the facts of each case. It is necessary, therefore, to consider the facts of the present case on the question of delay. It is undoubtedly true that the applicant has been placed under suspension for over a long period. But it should be noticed that she has been placed under suspension only on the ground of pendency of the criminal proceedings. Several cases are pending against her. The docket orders are placed before us by the learned counsel for the applicant to show that right from 1993 not much of progress is seen in the criminal case. We are, however, not posted with the latest stage of the case after the case was adjourned on 28.5.98. But it should be borne in mind that the applicant is faced with rather serious charges under Sections 420, 467, 468, 471, 120-B and 380 IPC. Hence, unless the proceedings are completed in the criminal case the applicant being a responsible officer in the Income Tax department, cannot be allowed to be placed to discharge her duties in the office.

M.H. Rahman v. Collector of Customs, Madras,
1989 (10) ATC 88 does not help the applicant. It was a case where the employee was suspended in contemplation of an enquiry under sub rule (1) of Rule 10 of CCS (CCA)

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Rules, 1965. He submitted representation for revocation of suspension. Meanwhile, he was detained under COFEPOSA and thereafter released. Since his representation for revocation of suspension did not meet favourable reply, he filed the OA before the Madras Bench of the Tribunal. In view of the long delay in issuing the memorandum of charges by the Department the suspension was revoked by the Bench. Hence, in this case the suspension was not due to the pendency of the enquiry in a criminal case. The case is, therefore, distinguishable on facts.

The next decision cited by the learned counsel for the applicant is State of H.P. v. B.C. Thakur, 1994 (27) ATC 567. It was held by the Supreme Court that the continuation of suspension for nearly two years without sufficient progress in the departmental enquiry was not valid. In this case also there is no mention about the pendency of the criminal proceedings. In view of the delay in the progress of the disciplinary proceeding without any proper explanation, the Court quashed the order of suspension. This case also has no application to the facts of the present case.

In Girraj Singh v. Commissioner of Police, New Delhi & Others, 1990 (12) ATC 889, as there was delay in completing the disciplinary proceeding the learned Judges of the Tribunal thought that it was not a case to continue the applicant under suspension. The question as to the delay caused due to the pendency of the criminal proceedings was not again the issue in this case.

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In Kamal Kishore Prasad v. Union of India & Another, 1990 (1) ATJ 227 the suspension for a period of about three years in not finalising the disciplinary proceedings ^{was} held, on the facts of the case, as not valid.

7. It has to be noticed that each case was decided on the facts and circumstances of that case. We have held supra on the facts and circumstances of the present case the delay has been properly explained and hence we are of the view that it is not desirable to revoke the suspension till the criminal cases against the applicant are finalised.

8. The next contention is as to the revision of the subsistence allowance w.e.f. 1.1.96. The learned counsel for the applicant relies upon FR-53. FR 53 (1) (ii) (a) deals with the payment of subsistence allowance. It reads as follows:

"(1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:--

(i)

(ii) in the case of any other Government servant--

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition, dearness allowance, if admissible on the basis of such leave salary;

Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have

made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;"

9. A perusal of the above rule makes it manifest that the subsistence allowance is made dependent upon the pay of the employee. It is not in dispute that the applicant has been paid the subsistence allowance on the basis of the pay which she was drawing on the date when she was placed under suspension. In view of the Government accepting the recommendations of the Fifth Pay Commission the pay scales of all the employees including the applicant have been revised w.e.f. 1.1.86. The short question, therefore is whether the applicant is entitled for drawing the subsistence allowance on the basis of the revised pay scales w.e.f. 1.1.96. Rule 53 appears to be silent on this aspect. This question has come up for decision before the Delhi High Court in CW-5034/97. The High Court held that the suspended employee was entitled to the subsistence allowance on the basis of the revised scale of pay from time to time with all other benefits,

including dearness allowance. The learned counsel for the applicant, therefore, places heavy reliance upon this judgement and submits that this question is no longer res integra. It is undoubtedly true that we are bound by the decision of the High Court which appears to be on all fours to the case on hand. But the learned counsel for the respondents brings to our notice Note-3 of Rule 7 of CCS (Revised Pay) Rules, 1997 and points out that the question as to the payment of subsistence allowance on the existing scale of pay or revised scale of pay has been dealt therein and accordingly a Government servant under suspension would continue to draw the subsistence allowance based on the existing scale of pay until the disciplinary proceedings are completed. He also points out that Note 3 of Rule 7 was not brought to the notice of the learned Judge of the High Court in the above case and the judgement in the above case proceeded without reference to it. Hence, it is contended that the said decision cannot be said to be a binding precedent upon the Tribunal. It is further contended that as per the 'Note 3' to Rule 7 the subsistence allowance of an employee has to be paid only on the basis of the existing pay and not the revised pay.

10. We see considerable force in the contention of the learned counsel for the respondents. Note 3 to Rule 7 reads as follows:

"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

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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."

11. It clearly says that a Government servant under suspension shall continue to draw subsistence allowance only on the existing scale of pay. He would also be entitled for the payment of the revised pay scale only subject to the final order that may be passed on the pending proceedings. The note also speaks about the Government servant who was on leave on 1.1.96. It also states that he would be entitled for the revised scale of pay from the date he joins duty.

12. The C.C.S. (Revised Pay) Rules, 1997 have been made under Article 309 of the Constitution for the purpose of fixation of pay of the Government servant in the revised pay scales w.e.f. 1.1.96. Rule 7 deals with the fixation of initial pay in the revised grade. Unless the pay of the Government servant was fixed in the revised scale of pay he was not entitled to draw pay or the subsistence allowance at the revised pay scale, though the Government implemented the revised scales of pay as recommended by the Fifth Central Pay Commission.

13. The only question that remains for consideration is whether the judgement of the Hon'ble Delhi High Court is a binding authority on this question. No doubt, the petitioner made a grievance regarding non payment of subsistence allowance as per the revised scale of pay. The learned Judge, after

noticing FR 53, states in paragraph-4 of the judgement as under:

"F.R. 53 is very clear and when the appointing authority keeps an employee under suspension for an indefinite period, it is bound to pay the subsistence allowance as per the revised scale of pay. Therefore, the petitioner shall be entitled to the subsistence allowance as per F.R. 53 on the basis of the revised scale of pay from time to time from the date of suspension with other benefits like dearness allowance etc."

14. Thus it is seen that the learned Judge placed reliance on FR 53 for his conclusion to hold that the subsistence allowance is payable on the basis of the revised scale of pay. But it is clear that the judgement is not founded upon the construction of FR 53. It is not in dispute that FR 53 is silent on this aspect. It is true that uniformity and consistency are core of judicial discipline. Moreover, the Tribunal constituted under the Statute are bound by the judgements of the High Court. It is unthinkable for the Tribunal to question the validity of the judgement of the Hon'ble High Court. However, we are faced with a situation where the learned counsel for the respondents brought to our attention the relevant law and submits that Rule 7 of the CCS (Revised Pay) Rules, 1997 was not taken into consideration by the Hon'ble Judge of the High court. There is no doubt in our mind that Rule 7 of the Rules is the law applicable to the question as to the subsistence allowance payable on the revised scale.

His Lordship rendered the decision without at all noticing this rule. The Supreme Court in State of U.P. and Another v. Synthetics and Chemicals Ltd. and Another, 1991 (4) SCC 139, observed as under:

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

15. Again in Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101, the Supreme Court observed as under:

"A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter."


16. In the light of the above authoritative expatiation of law, since the above judgement of the Hon'ble High Court is not founded upon Rule 7 of CCS (Revised Pay) Rules, 1997, with due reverence to the learned Judge of the High Court, we deem it our duty to determine the question that is raised in the OA in terms of Rule 7 of the Rules without feeling constrained by the decision of the High Court.

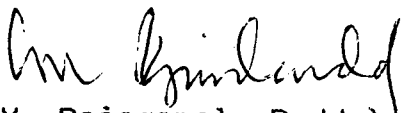
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17. We are of the considered view that Note 3 of Rule 7 of the Rules governs the case on hand and as per Note 3 a Government servant who was under suspension shall continue to draw the subsistence allowance based on the existing scale of pay as his pay in the revised scale would be subject to the final order that may be passed on the pending disciplinary proceedings.

18. The applicant is, therefore, not entitled for refixation of the subsistence allowance w.e.f. 1.1.96..

19. In view of the aforesaid discussion the OA fails and is accordingly dismissed. No costs.


(R.K. Aheer)
Member (A)
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(V. Rajagopala Reddy)
Vice-Chairman(J)