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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2463/1999

New Delhi this the 26th day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Shri Sulekh Chand Sharma
S/o Shri Har Swarup Sharma
R/o Dilshad Colony,
Shahadra, Delhi.
C/o Shri Sant Lal Advocate
C-21(B) New Multan Nagar,
New Delhi.

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Applicant

(By Shri Sant Lal, Advocate)

-Versus-

1. The Union of India,
through the Secretary,
Ministry of Communications,
Deptt. of Posts,
Dak Bhawan,
New Delhi-110001.
 2. The Director Postal Services,
Delhi Circle, Meghdoot Bhawan,
New Delhi.
 3. The Senior Superintendent of Post Offices
South East Division,
Golf Link,
New Delhi.
- Respondents/

(By Shri D.S. Mahendru, Advocate)

O R D E R (ORAL)

Shri V.K. Majotra, Member (A):-

By Office Memorandum dated 16.10.1997, the applicant who was placed under deemed suspension on 14.3.1995 on review of his case for prolonged suspension was ordered to be paid increased ^{of the admissible pay and allowances} subsistence allowance from 50% to 75% with effect from 16.10.1997. The applicant has sought that his subsistence allowance should be revised taking into account the revised pay scales introduced with effect from 1.1.1996 on recommendation of the Fifth Pay Commission and that the respondents should be directed to give him the benefit of increased subsistence

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allowance to 75% of the revised pay and allowances admissible to him with effect from 14.6.1995 instead of 16.10.1997 under F.R.53. He has also sought that his suspension should be revoked and he should be reinstated forthwith.

2. The learned counsel of the applicant has drawn our attention to F.R.53 in support of his claim stating that the period of prolonged suspension cannot be attributed to him and, therefore, his subsistence allowance should have been increased by the respondents on review at the revised rates as per revised pay scales permitted on the recommendation of the Fifth Pay Commission. He has relied on a decision of the Supreme Court in **Umesh Chandra Misra v. Union of India & Others**, (1993) 24 ATC 243. It will be useful to extract the relevant portion of the judgement which reads as under:-

"9. On the facts and circumstances of the case, therefore, we set aside the order of the Tribunal and direct the respondents to pay to the appellant the following amounts: subsistence allowance (i) from November 20, 1975 to May 19, 1976 at the rate of 50 per cent of the salary and (ii) from May 20, 1976 to February 17, 1977 at the rate of 75 per cent of the salary with interest on both the amounts thereon at the rate of 10 per cent per annum from September 26, 1979 on which date the appellant had filed his claim before the Payment of Wages Authority till the date of payment. We further direct that the subsistence allowance be paid on the basis of the revised scale of salary, if any, which was prevalent and due to the appellant during the relevant period for which the subsistence allowance is directed to be paid. We further direct that the payment be made to the appellant within six weeks from today."

3. The learned counsel of the applicant further mentioned that the respondents have not been

conducting periodical review of the suspension of the applicant as well as the subsistence allowance being paid to the applicant as required under the rules. The learned counsel further stated that in these reviews the respondents have not taken any decision regarding these points. The learned counsel of the respondents controverted the contentions of the learned counsel of the applicant by stating that the respondents had conducted reviews on 8.9.1995, 7.11.1996, 16.10.1997 and 29.4.1999. Drawing our attention to G.I.M.F., O.M.No.F 19(4)- E.IV/55, dated 17.6.1958 under F.R.53, the learned counsel of the respondents pointed out that "the suspended officer would continue to draw subsistence allowance at the rate of his leave salary on half-pay or half average pay until the competent authority passed an order under F.R.53 (1) (ii) (a). Thus he was of the view that the applicant will not be entitled to subsistence allowance on revised pay as recommended by the Fifth Pay Commission.

4. We find from the order dated 6.8.1997 passed in OA No.1813/97 which was earlier instituted by the applicant that he had challenged his suspension order and also that his subsistence allowance had not been increased under F.R.53. The Tribunal ordered as follows:-

"...We are afraid that we cannot interfere in the exercise of discretionary power already exercised by the respondents under FR 53. It is made clear that our order shall not preclude the respondents to review the order further and pass appropriate orders in favour of the petitioner."

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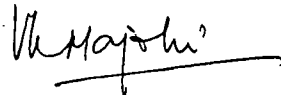
This order was passed on 6.8.1997 after the first two reviews dated 8.9.1995 and 7.11.1996 had already been effected. Immediately after the aforesaid order dated 6.8.1997, the respondents conducted a review on 16.10.1997 when the impugned Annexure A-1 was passed and the initial subsistence allowance of 50% was increased to 75% of the pay and allowances with effect from 16.10.1997. In view of the principle of res judicata, the ~~tribunal~~⁴ will not be able to adjudicate the matter with respect to the acts obtaining earlier than 16.10.1997 as the earlier reviews had² already been taken cognizance of by the Tribunal by their order dated 6.8.1997 in OA 1813/97.

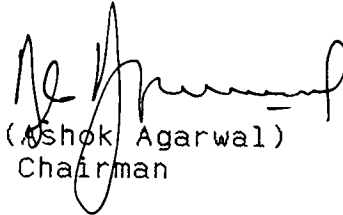
5. The ratio in the case of **Umesh Chandra Misra** (supra) is applicable to the facts of the instant OA and the subsistence allowance of the applicant has to be computed on the basis of his pay as revised with effect from 1.1.1996 as per the scales recommended by the Fifth Pay Commission. Thus in our 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.

6. As regards the claim of the applicant that the respondents should be directed to revoke the order of his suspension and reinstate him, we deem it fit and proper to direct the respondents to conduct the review of the suspension of the applicant periodically as laid down in the relevant rules and instructions.

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7. Present OA is disposed of in terms of the aforesaid directions. These directions should be carried out within a period of two months from the date of receipt of a copy of this order by the respondents. No order as to costs.


(V.K Majotra)
Member (A)


(Ashok Agarwal)
Chairman

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