

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2339 of 1996

New Delhi, this the 1st day of August, 1997

Hon'ble Mr. N. Sahu, Member (A)

Sh. Hira Lal Duggal, R/o 5/7, Urban Estates, Gurgaon-122001. Working as Stenographer Gr-III (Under Suspension) in o/o the Commissioner, Transport Deptt. Govt. of N.C.T., 5/9, Under Hill Road, Delhi-110 054 - APPLICANT
(By Advocate - Shri M.K.Gupta)

Versus

1. Govt. of National Capital Territory of Delhi Through its Chief Secretary, 5, Sham Nath Marg, Delhi
2. The Commissioner, Transport Department, Govt of N.C.T., 5/9, Under Hill Road, Delhi - 110 054 - RESPONDENTS
(By Advocate - Shri Rajinder Pandita)

J U D G M E N T

By Hon'ble Mr. N. Sahu, Member (A) -

In this Original Application the applicant seeks a direction to the respondent no.2 for payment of arrears on account of revised subsistence allowance as ordered vide order dated 17.8.92 read with corrigendum dated 9.12.1992 along with interest at the rate of 24% per annum. A prayer is also made for a direction for payment of full HRA and CCA since 10.12.1981.

2. The applicant, a Stenographer Grade-III, was placed under suspension on 27.3.1978 which was revoked pursuant to an order of acquittal by the Additional Sessions Judge, Gurgaon on 28.9.1979. On an appeal by the Government, the Punjab & Haryana High Court convicted the applicant and as such by an order dated 5.3.1982 he was placed under deemed suspension with effect from 10.12.1981. He was ordered to be paid 50% by way of subsistence allowance equal to the leave

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salary as per the formula evolved for the purpose in the rules. His appeal against the order of the High Court was allowed by the Hon'ble Supreme Court by judgment dated 19.1.1996.

3. The applicant states that his subsistence allowance should have been reviewed under P.R.53 before expiry of a period of three months of suspension. He made numerous representations for revision. Ultimately by an order dated 17.8.1992 the competent authority enhanced the subsistence allowance from 50% to 75% ~~of the basic~~ of the ~~house~~ salary as per the formula evolved for this purpose. On a further representation by a corrigendum dated 9.12.1992 the increased subsistence allowance was directed to be paid with retrospective effect from 9.6.1982. His request for payment of full HRA and CCA did not meet with a positive response.

4. The applicant waited to receive the payment and since the amount was not paid as per the orders during 1987, 89, 90 and 91 as also he made numerous representations on 8.7.1994, 27.7.94 and 10.8.1994 followed by a legal notice on 22.9.1994. In response to the legal notice he was informed that his arrear bill was prepared and was sent to P.A.O. X, Old Secretariat, Govt. of NCT, Delhi for payment. The grievance of the applicant is that he still has not been paid the increased subsistence allowance and that was how he filed this application on 1.11.1996.

5. The respondents contested this application on the ground that it is barred by limitation. It has also been stated that the Accounts Branch had prepared the bill of enhanced subsistence allowance at the

rate of Rs.750/- on revised scale for the period from 1.11.1991 to 31.7.1992, which was stated to be wrongl
 was stated to be prepared. The applicant/paid full HRA and CCA in pre-revised scale upto 31.10.1991. It is further stated that the suspension of the applicant by the order dated 5.3.1992 was revoked under Rule 10(5) (c) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 with effect from 18.10.1996. Subsequently, the competent authority had issued a notice dated 17.1.1997 to show cause under F.R.54(B) as to why the pay and allowances of the applicant should not be restricted to what he received during the period of suspension.

6. In the rejoinder it is submitted that once the respondents passed an order on 9.12.1992 authorising the applicant for increased subsistence allowance at the rate of 75% with effect from 9.6.1982, they are barred by the principle of estoppel from going back on their stand. The learned counsel for the applicant stated that once an enhanced amount has been ordered to be paid and was also accordingly paid for a part of the period, there was no justification to hold back the payment for the rest of the period. He cited a decision of the Hyderabad Bench of the Tribunal in the case of P.Xavier Vs.C.P.O.South Central Railway, 1996(2)SLJ(CAT)631.

7. The learned counsel for the respondents has stated that the claim is barred by limitation and has cited a decision of the Hon'ble Supreme Court in the case of S.S.Rathore Vs.State of Madhya Pradesh, AIR 1990 SC 10. He further has drawn my attention to

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a memorandum dated 17.1.1997 issued to the applicant under which the observations of the Hon'ble Supreme Court were focused to justify an inference that the acquittal was not an honourable acquittal. The Supreme Court observed that the "cloud of a strong suspicion of having liquidated Krishna Kumari" could remain. On this, the respondents proposed to hold that the acquittal was technical in nature and the suspension was not unjustified and, therefore, they wanted to restrict the pay and allowances of the applicant to what had been already drawn by him and they proposed to hold the period of suspension as not spent on duty. For this purpose the learned counsel submits that they do not intend to make the additional payment pursuant to their order dated 9.12.1992 read with their note dated 4.4.1995.

8. I have carefully considered the rival submissions. The entitlement of an officer under suspension are very clearly laid down. A Government servant under suspension is entitled to subsistence allowance and other allowances from the date of suspension and during the period of suspension under the statutory provisions of F.R.53. By the Govt.of India's, Ministry of Finance, O.M.No.F.1(2)-E.IV(A)/63-III dated the 29th August, 1963 it is laid down that the subsistence allowance shall not be denied to the Government servant on any ground unless he does not furnish a certificate of non-engagement in any employment during the period of suspension. It is also obligatory under F.R.53 that within a period of three months the competent authority should review each case and even if it comes

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to the conclusion that the rate is not to be altered specific orders ought to be passed placing on record the circumstances under which the decision had to be taken. Under F.R.53(1)(ii)(a) the competent authority can vary the amount of subsistence allowance for any period subsequent to the first six months of suspension by increasing it by a suitable amount if in the opinion of the said authority the period of suspension was prolonged due to reasons not directly attributable to the Government servant. The subsistence allowance can also be reduced if the delay in the proceedings is directly attributable to the Government servant. In either of these two alternatives, reasons have to be recorded in writing and statutory orders should be passed under F.R.53. The Department of Personnel and Administrative Reforms in OM No.11012/10/756-Estt(A) dated the 6th October, 1976 stated that timely payment of subsistence allowance should be made to Government servants so that they will not be put to financial difficulties. It is also stated in OM dated 28.10.1985 of Deptt.of Personnel & Training that when a Government servant is placed under suspension, prompt steps should be taken to ensure that immediate action is taken under FR 53 for payment of subsistence allowance. In the present case orders under F.R.53 have been passed on 9.12.92 for payment of subsistence allowance with effect from 9.6.1982. The authorities were satisfied that conditions under F.R.53 were fully satisfied and, therefore, this order was passed. Because of the delay in payment, the applicant had approached time and again and a bill was prepared and was sent to the



Pay & Accounts Officer for actual payment. The contentions of the respondents in my view are unfounded. There is no justification in holding back the amount payable simply because on 17.1.1997 they had intended to consider the fixation of pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement. The obvious reference is that they intend to freeze the payment of allowance 50% as subsistence/already received by the applicant. This argument is opposed to the provisions of law. In the first place the conditions governing enhancement or varying of subsistence allowance under F.R.53 are absolutely different from the conditions governing the determination of pay and allowances during the period of suspension after reinstatement. The first order or later review of subsistence allowance is only concerned with whether the delay in the conclusion of the disciplinary proceedings was or not attributable to the Government servant. The fixation of pay and allowances after reinstatement is based mostly on the order of the competent Court which finally decided either the disciplinary proceedings or criminal appeal. If the acquittal is honourable then the period of suspension would be treated as a period of duty. If the acquittal is on technical grounds then the employer is entitled to take a different view. Whatever may be the view this decision has to be arrived at under F.R.54-B, which is an independent statutory provision. F.R.53 and F.R.54-B operate on two different planes. The conditions governing suspension allowance and the conditions governing treatment of the period of suspension/are on two different levels. The respondents have committed an obvious act of injustice in delaying the

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review of the first suspension allowance. They have reviewed it, it should be noted, on 17.8.1992 and later on amended it on 9.12.1992, which was 10 years after 5.3.1982, the date of second suspension. This order itself resulted in an abnormal unconscionable delay in contravention to the statutory rules and the instructions. Even after this, there was a delay of another 5 years in making the payments. This is an act of gross injustice perpetrated on the applicant. To link up F.R.54-B with F.R.53 as observed above is entirely baseless. If the intention of the respondents is to freeze the subsistence allowance at 50% which was awarded to him initially, even that too is not permissible under the rules. F.R.54-B(9) states as under-

"The amount determined under the proviso to sub-rule(3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53".

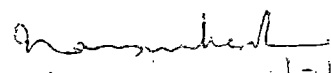
(emphasis supplied)

Thus, what F.R.54-B(9) authorises is limiting the pay and allowances to the amount of subsistence allowance and other allowances admissible under FR 53. I have already narrated above that the order raising the subsistence allowance to 75% has already been passed before the order of the Hon'ble Supreme Court dated 19.1.1996. That is a statutory order passed after the competent authority satisfied itself that the conditions for increased subsistence allowance were eminently satisfied. As this order was passed before the judgment of the Hon'ble Supreme Court and the order was made effective retrospectively, there is no conceivable relationship for linking the judgment of the Hon'ble Supreme Court to this order of increased subsistence allowance.

9. The learned counsel for the respondents states that this Original Application is hit by limitation. It is not possible to agree with him even here. The applicant was expecting to receive a certain amount from December, 1992 which was denied to him. He only wants enforcement of payment and interest for delay. This again is a case of recurring payment of enhanced subsistence allowance till he was reinstated. This reinstatement as mentioned above was on 17.1.1997. Till 17.1.1997 the applicant was expecting to receive the enhanced subsistence allowance which he was deprived. Till that date his cause of action for enforcing the same has remained alive.

10. I, therefore, direct that within 4 weeks from the date of receipt of a copy of this order the respondents shall compute and pay the enhanced subsistence allowance as per their order dated 9.12.1992 for the period from 9.6.1982 till reinstatement. I am constrained to say that the delay in making the payment is absolutely without any basis and is in gross violation of instructions on the subject which I have quoted above. I would, therefore, direct payment of interest at the rate of 10% per annum on the amount payable from 1982 onwards. This interest shall be calculated three months after 9.12.1992, namely, from 1.3.1993 till the date of payment and shall be paid along with the subsistence allowance within the time-frame stipulated above.

11. In the result, the application is allowed with the above directions. The parties shall bear their own costs.


(N. Sahu)
Member (A) 1/8/97