

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 68/1997

(A)

New Delhi, this 17th day of March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)

Hon'ble Shri S.P. Biswas, Member(A)

Shri Swaran Singh

s/o Shri Jagdish Chand

Substitute Khallasi, Signal Workshop

Northern Railway, Ghaziabad .. Applicant

(By Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. General Manager

Northern Railway

Baroda House, New Delhi

2. Signalling & Telecommunication Engineer

Northern Railway

Baroda House, New Delhi

3. Chief Workshop Manager

Northern Railway Signal Workshop

Ghaziabad

.. Respondents

(By Shri B.S. Jain, Advocate)

ORDER(oral)

Hon'ble Dr. Jose P. Verghese, V.C.(J)

(5)

This is an original application filed by the applicant with a limited relief sought, namely, that the period from the date of dismissal i.e. 16.10.1988 to 4.1.1995 as per Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968 be treated as deemed suspension and subsistence allowance for this period may be paid to him.

The learned counsel for the applicant stated that he had filed OA-1380/90 against the dismissal order dated 16.10.89 and this Tribunal had allowed the said application by an order dated 31.8.1994 and quashed the impugned order and directed the respondents to start the departmental proceedings de novo. Finding that there was no direction to the respondents to pay the subsistence allowance to the applicant which he is entitled to under Rule 5(4) of the Rules, he filed a review application No.379/94 and this Tribunal dismissed the same on 16.1.1995 stating therein that the applicant is entitled to subsistence allowance under Rule 5(4) of the said Rules. The respondents should have considered the period in question as deemed suspension and should have paid to the applicant the subsistence allowance as admissible under the rules. The respondents did not do so.

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The applicant thereafter filed a contempt petition which was decided on 14.11.1996 and in view of the fact that he intended to file a fresh O.A. for payment of subsistence allowance, he made a request to the Tribunal to permit him to withdraw the contempt petition and the Tribunal had permitted him to do so with liberty to file a fresh O.A. Accordingly, this O.A. has been filed. The respondents have filed their reply today and we have perused the O.A. as well as the reply. The respondents in their reply have stated that in the absence of any directions of this Tribunal in the original application for treating the above said period as deemed suspension and in the absence of a direction to pay subsistence allowance to the applicant and in view of the dismissal of the R.A. and thereafter the withdrawal of the contempt petition, the orders in the original application has become final and the respondents are not obliged to pay the subsistence allowance as now requested in this O.A. by the applicant.

We are not in agreement with this contention for the reason that the review application was filed for this very purpose for payment of subsistence allowance for the said period and the order dismissing the review has clearly indicated that the applicant is entitled to subsistence allowance for the same period referred to in the relief clause in this O.A. considering the said period as deemed suspension. This fact was also mentioned in the order permitting the applicant to withdraw the contempt petition. Apart from all these, Rule 5(4) of the said rules in clear terms provides that the period in such circumstances as this case should be considered as deemed suspension and the applicant is entitled to subsistence allowance as admissible under the rules. Rule 5(4) is quoted here below:-

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(J)

"Subsistence Allowance on Deemed Suspension under Rule 5(4): As per this rule if the court exonerates an employee on technical grounds the disciplinary authority is at liberty to deem him under suspension from the date of original removal and continue the proceedings. In such a case of deemed suspension an employee may demand the review of the subsistence allowance from the expiry of first 90 days from the deemed dated and demand an enhanced subsistence allowance, even though such a suspension order was issued at a much later date due to a deeming provision available in the rules and was necessitated due to the court's orders. In such cases there is no question of any review as demanded and not more than 50% of pay can be paid as a subsistence allowance upto the date orders were passed of deeming suspension and thereafter the review may be done after the expiry of 90 days from that date." In view of the facts and circumstances of this case, we are of the view that the applicant is entitled to subsistence allowance for the period from the date of dismissal i.e. 17.8.88/16.10.88 to 4.1.995 as per Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968. The respondents are directed to give full effect to Rule 5(4) and consider the said period as deemed suspension and pay the subsistence allowance as admissible under the Rules."

The respondents shall also pay the said subsistence allowance from the date of the order in review with an interest at the rate of 9% per annum till the actual payment is made and this order shall be complied with within a period of four months from the date of receipt of a copy of this order. There will be no order as to costs.



(S.P. Biswas)

Member(A)



(Dr. Jose P. Verghese)

Vice-Chairman(J)

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