

Central Administrative Tribunal  
Principal Bench, New Delhi.

(4)

O.A. No. 169/94

New Delhi this the 23rd Day of March, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman  
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Shri P.K. Mohanty,  
S/o late Sh. Gopinath Mohanty,  
R/o DG-1021, Sarojni Nagar,  
New Delhi.

Applicant

(By advocate Sh. K.C. Sharma)

VERSUS

1. Union of India  
through the Secretary  
Information and Broadcasting,  
Shastri Bhavan,  
New Delhi-1.

2. The Secretary,  
Ministry of Information  
and Broadcasting,  
Shastri Bhavan,  
New Delhi-1.

3. Director General Doordarshan,  
Doordarshan Bhavan,  
Mandi House, Copernicus Marg,  
New Delhi-1.

Respondents

(By advocate Sh. P.H. Ramchandani, Sr. Counsel)

ORDER(ORAL)  
delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The prayer is that the order dated 26.3.1993  
passed by the Secretary, Government of India suspending  
the applicant from service may be quashed.

A counter-affidavit has been filed on behalf  
of the respondents. The learned counsel for the parties  
have been heard. Though this O.A. has not been admitted  
so far, we are disposing of the same finally.

The impugned order says that it has been passed  
in contemplation of disciplinary proceedings. It is  
now <sup>an</sup> admitted position that a charge-sheet has been given

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to the applicant and he has given his reply thereto. We have seen the charges. To investigate the charges, it should not take long. We, therefore, direct the disciplinary authority to complete the disciplinary proceedings within a period of three months from the date of production of a certified copy of this order by the applicant before it. Even if the applicant does not cooperate with the Inquiry Officer, it will be open to the authority concerned to pass a final order within the time specified.

D Undoubtedly, the applicant was given a subsistence allowance from the date when the order of suspension was passed. It is urged on his behalf that in accordance with the terms of sub-clause(i) to the proviso of sub-rule(1) of Rule 53(ii)(a) of the Fundamental Rules, it was obligatory upon the competent authority to vary the amount of subsistence allowance payable to the applicant from the period subsequent to the first three months from the date of passing of the order of suspension. It is, therefore, submitted that we should issue an order in the nature of mandamus commanding the authority concerned to pay to the applicant subsistence allowance at a higher rate. Reliance is placed upon the instructions issued on 23.8.1979 in O.M.No.16012/1/79-L.U. In this office memorandum, it is, inter alia, stated that the review of the subsistence allowance should be made at the end of three months from the date of suspension instead of the present practice of varying the subsistence allowance after six months. This will also give an opportunity to the concerned authority to review not merely the subsistence allowance but also the substantive question of suspension.

We have examined the language of the said Rule and we find that for the purpose of increasing

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the subsistence allowance, an application of mind of the competent authority is required. He has to record reasons in writing that the delay in disciplinary proceedings for the purpose of increasing the subsistence allowance is not directly attributable to the government servant. It is trite law that no positive order can be passed by a Court/Tribunal giving relief to a litigant where an order has to be passed by an inferior authority objectively after due application of mind. The increase in the subsistence allowance is not a mechanical act. It is also not a ministerial act. We, however, direct the authority concerned to consider the question of the increase of the subsistence allowance payable to the applicant even from the back date after due application of its mind to the facts and circumstances of the case and also having regard to the relevant rules and instructions on the subject. It shall pass a speaking order if it declines to increase the said allowance.

With these directions, this O.A. is disposed of finally.

No costs.

A copy of this order be given to the learned counsel for the parties.

*B.N.Dhondiyal*  
( B.N.Dhondiyal )  
Member(A)

*S.K.Dhaon*  
( S.K.Dhaon )  
Vice Chairman

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