

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

R.A. No.22 of 1994, IN

O.A. No. 1187 of 1993

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Dated at New Delhi the 31st Day of January, 1994

Hon'ble Shri B. K. Singh, Member (A)

Shri Bhisham Kumar  
House No. B-4/5880  
Street No. 5  
Dev Nagar  
Karol Bagh  
NEW DELHI

... Applicant

By Advocate Shri V.S.R. Krishna

Vs.

Delhi Administration, through

1. The Chief Secretary  
Delhi Administration  
5, Shyam Nath Marg  
DELHI
2. The Commissioner  
Food Supplies & Consumer Affairs  
Government of National Capital  
Territory of Delhi  
Delhi Administration  
2, Under Hill Road  
DELHI

... Respondents

By Advocate None

ORDER

Hon'ble Shri B. K. Singh, M(A)

This Review Application has been filed against the Judgement and Order passed in O.A. 1187 of 1993 on 12th November, 1993. The order of the Chief Secretary is based on the Judgement of Delhi High Court. In the case of the present applicant, the Tribunal can review its Judgement only when a new fact or evidence has been brought before it which inspite of the best efforts of the applicant could not be produced at the time of hearing. Secondly,

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it can be reviewed when there is patent error of fact or law staring on the face of record without any effort to establish it. And, thirdly, for any other sufficient or reasonable cause.

3. The present Review Application has been filed not because some new evidence or fact has come to the notice of the review applicant nor has he brought out any error of fact or law or any other reason warranting review of the judgement and order dated 12th November, 1993. He has not mentioned anything in the Review Application which he did not argue at the time of hearing of the case. Section 114 Order 47 Rule(1) clearly lays down that if any of the three ingredients mentioned above are not available in the Review Application, the same is liable to be rejected under Order 47 Rule 4(1) read with Section 114 of the C.P.C.

3. In this case it is admitted that the applicant was dismissed from service and later on as a result of an appeal admitted by Delhi High Court in the criminal case, the Delhi Administration set aside the order of dismissal from service and placed the review applicant under suspension allowing him to draw normal subsistence allowances.

4. It is true, the learned counsel for the applicant



in the case, State of Maharashtra Vs. Chanderbhan  
A.I.R. 1983 S.C. 803 wherein it was observed that:  
"a civil servant under suspension, is entitled to the  
normal subsistence allowance even after his conviction  
by the Trial Court pending consideration of appeal  
filed against his conviction until the appeal is  
disposed of finally one way or the other."

5. After dismissal of a civil servant, the  
relationship of the master-and-servant is snapped  
and the lien of a civil servant against that post  
also gets terminated. His lien as such is restored  
only when he is exonerated of the criminal/departmental  
charges and reinstated in service. Similar is the  
situation in the case of the review applicant. On  
the basis of the appeal filed in Delhi High Court  
against the order of the Session's Judge, the Delhi  
Administration set aside the order of dismissal and  
placed the Review Applicant under suspension.

6. In the meanwhile, the Delhi Administration in  
the case of a similarly situated person Ramesh Kumar,  
filed a S.L.P. where special leave was granted and  
the operation of the order regarding re-fixation  
of pay also was stayed since this was one of the  
issues raised in the S.L.P. filed before the Hon'ble  
Supreme Court. There were three issues in the S.L.P.  
raised by the Delhi Administration:



- (i) the action under Rule 19(1) CCS(CCA) Rules, 1965 against a Govt. servant convicted in a criminal court has to await disposal of appeals by appellate Criminal courts, as held by the Central Administrative Tribunal in para 13(iv) of the order.
- (ii) Whether the quashing of dismissal orders by Central Administrative is lawful in the circumstances of the case particularly at admission stage without allowing appellants to present their case.
- (iii) Whether the respondent is entitled to subsistence allowances."

The very grant of subsistence allowance is under challenge before the Hon'ble Supreme Court. The question of review of pay and enhancement of subsistence allowance is thus a major issue raised by the Delhi Administration. <sup>reply to</sup> In/a representation filed by the present review applicant, the Delhi Administration also refused to refix his pay and grant him higher subsistence allowance on the basis of refixation of pay in view of S.L.P. in Civil Appeal No.884 of 1990 where the S.L.P. was admitted and the operation of the order revising the pay scale and then fixing subsistence allowances on the basis of the revised pay scale, also was automatically stayed by the Hon'ble Supreme Court. The said reply of Delhi Administration is reproduced below:

" ... Reference his application dated 28.8.1992  
fixation of pay in the revised scale.



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Shri Bhishan Kumar is hereby informed that his case had been considered by Services Department. Services department in turn has advised this deptt. to await the decision of Supreme Court, in case of Shri Ramesh Kumar, in whose case a SLP has been filed by this department."

7. The question of revised pay scale on the basis Fourth Pay Commission, can be taken up by the review applicant only the criminal appeal filed by him is decided in his favour and the administration decides not to proceed against him departmentally and reinstate him in service with all consequential benefits treating the suspension period as on duty. The phraseology 'normal subsistence allowance' does not imply review of pay scale on the basis of the recommendations of the Fourth Pay Commission. Any increase in subsistence allowance as a result of refixation of pay on the basis of the Fourth Pay Commission would be going against the spirit of the stay order granted by the Hon'ble Supreme Court. The entire matter hangs in balance till it is decided one way or the other by the Hon'ble Supreme Court.

8. In the light of the aforesaid observations, I do not find any merit in the present Review Application. The Judgement and order dated 12th November, 1993 is not the final order. The review applicant will be at liberty to approach this



favour, the competent authority decides not to  
proceed departmentally and he is reinstated in  
service on the basis of a favourable decision.  
Till he is reinstated in service, he will not  
be entitled to any consequential benefits including  
review of pay and grant of increments etc.

8. With these observations, the Review  
Application is disposed of.

No costs.

(B. K. Singh,  
Member (A))

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