

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CENTRAL BENCH : NEW DELHI

R.A. No. 22 of 1994, IN

O.A. No. 1187 of 1993

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 or
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

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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:

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"(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. 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 of 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

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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.

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B. K. Singh
Member (A)

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