

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~Principal Bench~~ New Delhi

O.A. NO. 606 1988.
~~F.A. NO.~~

DATE OF DECISION 3-1-1990

H. C. Mishra

PETITIONER

Sri Umesh Mishra

Advocate for the
Petitioner(s)

VERSUS

Union of India & Others

RESPONDENT

Smt J. S. Bala

Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice Ramakrishnaiah, Jc.

The Hon'ble Mr. P. C. Jain, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether to be circulated to other Benches ? Yes

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Registration O.A. No. 606 of 1988

A.C. Midha Applicant

Versus

Union of India & Others Respondents

Hon. Justice Kamleshwar Nath, V.C.

Hon. Mr. P.C. Jain, Member (A)

(By Hon. Justice K. Nath, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who was working as Ahlamad in the Court of the Presiding Officer, Industrial Tribunal, Delhi, and has been under suspension w.e.f. 3.4.78, has prayed for the following reliefs :-

- "(A) Direct the respondents, their officials and agents to give the subsistence allowance and other benefits to the applicant on the basis of pay fixed by Fourth Pay Commission alongwith the arrears;
- (B) Grant any other relief or reliefs which are fit under the circumstances of the present case;
- (C) Allow the cost of the application in the interest of justice."

2. The facts of the case, in brief, are as under :-

The applicant was serving as Ahlamad in the Court of Presiding Officer, Industrial Tribunal, Delhi. He was arrested by the Anti-corruption Branch for his

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alleged demanding and accepting the bribe and was placed under suspension w.e.f. 3.4.78. He was convicted by the Trial Court on 30.9.78 under Section 5(2) of the Prevention of Corruption Act and Section 161 IPC and sentenced to one year R.I. and fine of Rs.100/-. Consequently, he was dismissed on 20.1.1981. The applicant filed an appeal in the Delhi High Court against his conviction which was admitted on 9th October, 1978 and he was granted bail. The said criminal appeal, No.183/1978 is stated to be still pending in the Delhi High Court. In the meanwhile, on his representation, the dismissal order of the applicant was revoked and he was deemed to be under continued suspension. He was granted subsistence allowance at the rate of $\frac{3}{4}$ of his basic pay with effect from 3.10.78 i.e., the subsistence allowance was varied after six months of his having been placed under suspension, as per these provisions of F.R. 53(3).

3. The case of the applicant is that the pay scales have since been revised with effect from 1.1.86 as a result of the recommendations of the Fourth Pay Commission and as such, he should be granted enhanced subsistence allowance as per the revised pay scale. According to him, as per Order dated 25.6.85 (Annexure 'B to the application), he was allowed to draw subsistence allowance at the rate equal to the leave salary which he would have drawn had he been on $\frac{3}{4}$ th of the pay in

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addition to dearness allowances, if admissible on the basis of such leave. He claims that the pay for this purpose should not be taken as the pay which he was drawing at the time of suspension, but it should be taken as the pay to be fixed after the acceptance of the recommendations of the Fourth Pay Commission, i.e., on the basis of the new scale of pay which has come into being with effect from 1.1.1986.

4. The case of the respondents is that the applicant who is under suspension, is entitled to subsistence allowance as per F.R. 53 and that the question of revision of his pay would arise when he is reinstated and on his exercising the option in that event. According to them, subsistence allowance is regulated with reference to the pay drawn by the official under suspension immediately before suspension and as such, the subsistence allowance cannot be revised under the Rules with effect from 1.1.86. In accordance with the Govt. of India's order No.2 below F.R. 53, cases in which the revised pay scale takes effect from a date falling within the period of suspension and the Government servant under suspension retains a lien on his substantive post, he could be allowed the option even while under suspension, but the benefit of option for revised scale would practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period

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of suspension is treated as duty or not. The CCS (Revised Pay) Rules, 1986 (Rule 6 Proviso (ii) provide that where a Government servant is under suspension on 1.1.86 the option may be exercised within three months of the date of his return to duty if that date is later than the date as prescribed in Rule 6(1) of the Rules *ibid*.

5. In M.P. No.1266/89 filed on behalf of the applicant for grant of early hearing, the Hon'ble Chairman, vide his order dated 16.8.1989 directed the case to be listed for final hearing on 17.11.1989. On 17.11.89, the applicant appeared in person and went away for searching out his counsel. He, however, did not turn up thereafter, nor his counsel appeared in the case. None was present for the respondents as well. Since the pleadings of the case are complete, the case is being disposed of on merits on the basis of the material on record.

6. The payments which a Govt. servant is entitled to receive during the period of suspension consist, under F.R. 53(1), of -

(1) a subsistence allowance at " an amount equal to the leave salary which the Govt. servant would have drawn if he was on leave on half average pay or half pay ",

(2) DA if admissible on the basis of such leave salary,

(3) "any other compensatory allowances admissible from time to time on the basis of the pay which the Govt. servant was in receipt on the date of suspension....."(Emphasis added)

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7. It is clear from these provisions that the amount of subsistence allowance is directly related with 'pay'. It is also clear that certain compensatory allowances are also relatable to pay and their quantum is variable from time to time. The expression 'pay' under F.R. 9(21) means the amount drawn monthly as pay which has been sanctioned for a post held by the Govt. servant substantively or in an officiating capacity. 'Pay', therefore, is the amount which is sanctioned as such for a post held by the Government servant; as and when the amount sanctioned is changed, so also the pay gets changed. According to F.R. 23, the holder of a post, the pay of which is changed, shall be treated as if he was transferred to a new post on the new pay. In other words, as soon as the pay of a post is changed, the pay of its holder also gets automatically changed. An exception to this result is contained in the proviso to F.R. 23. The proviso says that the Govt. servant "may at his option retain his old pay". The significant feature is that the option may be exercised for retaining the "old pay"; no option is required to be exercised for obtaining the new changed pay. The application of the new revised pay is automatic under F.R. 23. For that very reason, the orders of Govt. of India set out in para 2(2) under F.R. 53 has no application to a case where the revised pay applies automatically. The order says that as the expression 'holder of lien' in F.R. 23 includes a person who holds

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a lien (like a Govt. servant under suspension) or a suspended lien on a post, even though he may not be actually holding the post, such Govt. servant may be allowed the option under F.R. 23, i.e. an option to retain the 'Old pay'. The further view in the Govts order that "the benefit of option will, however, practically accrue to him in respect of the period of suspension only after his reinstatement depending upon the fact whether the period of suspension is treated as duty or not" is irrelevant for the purposes of the applicant because he has sought benefit of the revised pay scale and not the old pay scale. If there was any doubt in this position, it has been set at rest by Rule 12 of the Central Civil Services (Revised Pay) Rules, 1986 (for short, the Rules) which says that, among others, the provisions of F.R. "shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules to the extent they are inconsistent with these rules." As shall appear presently, the provisions of these Rules protect the right of every employee, including a suspended employee, to get the benefit of revised pay scales made effective from 1.1.1986.

8. Rule 4 says that as from the date of commencement of those Rules, the scale of pay of every post specified in column 2 of the First Schedule shall be as specified against it in column 4 thereof. Hence the revised pay scales operate automatically from 1.1.86. Rule 5 say

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that save as otherwise provided in those rules, a Govt. servant "shall draw pay" in the revised scale applicable to the post to which he is appointed. The only saving provision, for the purpose in question, is the proviso to Rule 5 that the Govt. servant "may elect to continue to draw pay in the existing scale...." It will be noticed immediately that the right to exercise election is confined to the 'existing scale' and does not extend to the 'revised scale'. This election is described as 'exercise of option' in explanation 1 to 3 of Rule 5.

9. Rule 6(1) requires that the option under Rule 5 shall be exercised in the form appended to second Schedule so as to reach the Head of Office (vide sub rule 2) within 3 months of publication of rules. Proviso (ii) says that a Govt. servant under suspension on 1.1.36 may exercise the option within three months of the date of return to duty; but this proviso is irrelevant because the applicant seeks the benefit of the revised scale, and not of the 'existing scale', and therefore he need not exercise any option at any time.

10. It may be mentioned that the form appended to second Schedule of the Rules contains clauses for both options, i.e. for retaining the 'existing scale' or going over to the 'revised scale'; but at the same time it requires the Govt. servant to strike off what is not applicable. Even so, this dubious situation is set right by sub rule (3) of Rule 6 which says that

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if the intimation regarding the option is not received within the time mentioned in Sub Rule (1), the Govt. servant "shall be deemed to have elected to be governed by the revised scale of pay, i.e. with effect from 1.1.86." . This purpose of the Rule is also clearly indicated in the "Memorandum Explanatory to CCS(Revised Pay) Rules, 1986" printed at page 1739 of Jagjit Singh Chawla's * All India Service Code" Volume 2, 1988 Edition of S.L.R. Publication Chandigarh. The recorded explanation regarding Rule 5 is that "The intention is that all the Govt. servants should be brought over to the revised pay scales except those who elect to draw pay in the existing scales." There can be no doubt therefore that the object of the Rules is to give the benefit of revised scales to " all Govt. servants"; undoubtedly, a Govt. servant under suspension continues to be a Govt. servant.

11. The method of pay fixation under the Rules also shows the direction in which the philosophy of the Rules runs. Rule 7(1) says that the initial pay of the Govt. servant who elects to be governed (under Rule 6(1), or is deemed to elect (under Rule 6(3)) to be governed by the revised scale shall be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien, or would have held a lien if it had not been suspended, or in the officiating post held by him in the following manner, namely,

(A) In case of all employees -

(i)

(ii)

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12. Here again, the use of the expression "all employees" must include 'suspended employees', and therefore their pay must be fixed in the revised scale. These provisions will have effect in supersession of anything inconsistent thereto in the F.R. in view of Rule 12.

13. A careful consideration of all the applicable rules, therefore, leads to the conclusion that the applicant's pay must be revised with effect from 1.1.86 on the basis of the revised scales, and in consequence thereof the amount payable to the applicant as subsistence allowance under F.R. 53 must also be revised. The necessary corollary is that the applicant must also get arrears of subsistence allowance from 1.1.86.

14. The application is allowed, and the opposite parties are directed to revise the applicant's pay as well as subsistence allowance with effect from 1.1.86 and pay the arrears thereof in the light of the observations made in the body of this judgement. The opposite parties are directed to carry out these directions within a period of three months from the date of receipt of a certified copy of this judgement. Parties shall bear their costs.

(P.C. JAIN)
MEMBER (A)

(KAMLESHWAR NATH)
VICE CHAIRMAN

Dated the JANUARY 3, 1990.

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Pronounced in open court.

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