

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00134/2016

Tuesday, this the 16th day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

D.R.Nandakumar,
Postman, University Post Office,
Thiruvananthapuram – 695 034.
Residing at Amma, Vellayani, Nemom P.O.,
Thiruvananthapuram – 695 020.

...Applicant

(By Advocates Mr.Vishnu.S.Cempazhanthiyil)

v e r s u s

1. Union of India,
represented by its Secretary & Director General,
Department of Posts, Dak Bhavan,
New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
3. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Postal Division,
Thiruvananthapuram – 695 001.
4. The Assistant Superintendent of Post Offices,
Thiruvananthapuram Central Sub Division,
Thiruvananthapuram – 695 036. **...Respondents**

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 3rd March 2021, the Tribunal on 16th March 2021 delivered the following :

O R D E R

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The Original Application has been filed by the applicant seeking the following reliefs :

1. *Direct the respondents to grant enhanced subsistence allowance in terms of FR 53, from the eligible date as per the statutory requirement.*

2. *Direct the respondents to consider granting subsistence allowance due to the applicant taking into account the revised pay introduced as per 6th CPC recommendation.*

3. *Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.*

4. *Award the cost of these proceedings.*

2. The background of this case, based on the details provided in the O.A and in the reply statement filed by the respondents is that the applicant, who was working as a Postman, was dismissed from service vide Memo No.F1/3-3/2000/01 dated 10.08.2006 after the culmination of disciplinary proceeding. Aggrieved by this, he approached this Tribunal in O.A.No.279/2008 challenging the penalty of dismissal from service. The Tribunal in its orders dated 02.06.2009, produced at Annexure A-1, allowed the O.A and directed the respondents to reinstate the applicant with retrospective effect from the date of his removal with all consequential benefits and to issue necessary orders within two months from the date of receipt of a copy of the order. The Tribunal's order was challenged by the respondents in W.P.(C) No.24699/2009 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala on 27.08.2009 granted an interim stay only regarding the disbursement of backwages and on no other directions of the Tribunal (produced at Annexure R-1). The respondents then reinstated the applicant with effect from 08.10.2009 and orders were issued to that effect. However, on the same day, the 4th respondent passed another order placing the applicant under suspension with effect from

08.10.2009 afternoon, in connection with contemplated disciplinary proceeding in other Money Order frauds. A copy of this suspension order has been produced by the applicant at Annexure A-2. The respondents submit that the applicant was paid subsistence allowance with effect from date of suspension as provided for in the relevant rules. They submit that the applicant then gave a representation (copy at Annexure A-4) dated 22.12.2011. The Annexure A-4 representation states that the applicant has been suspended from service from 09.10.2009 and, as per Government Orders, on completion of 90 days of suspension, the allowance will have to be enhanced by 50%. The applicant also mentioned in Annexure A-4 representation that it is mandatory to review the subsistence allowance at the end of three months and that orders have to be issued by the authorities concerned. Hence, he requested that necessary instructions be issued for enhancing the subsistence allowance on completion of initial 90 days of suspension. The 3rd respondent, the Senior Superintendent of Post Offices, Thiruvananthapuram, then issued an order dated 04.01.2012 (produced at Annexure A-3) wherein it was noted that the applicant was suspended from service with effect from 08.10.2009. As per the provisions contained in FR 53(1) (ii) he has been granted subsistence allowance equal to 50% of his pay last drawn. In exercise of the powers contained in the same rules the 3rd respondent reviewed the subsistence allowance and ordered that the same may be increased by an amount equal to 10% of the allowance initially granted to him.

3. It is submitted by the applicant that no orders were passed by the competent authority, either enhancing or reducing or maintaining the quantum of subsistence allowance initially granted, despite completion of 90 days of suspension, in terms of the statutory provisions. Further, no review has been effected before the stipulated period of 90 days. He submits that he was entitled for enhancement of subsistence allowance on completion of 90 days but the subsistence allowance was enhanced only after 15 months by the order produced at Annexure A-3 dated 04.01.2012. He submits that he was not directly or indirectly responsible for the delay in conducting the proceeding. In such circumstances denying enhanced subsistence allowance on completion of 90 days is illegal and arbitrary. He also submits that as per FR 53 the authority competent to vary the amount of subsistence allowance may increase the same by an amount not exceeding 50% of subsistence allowance admissible during the period of first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant. Hence, the first relief sought by him is for grant of enhanced subsistence allowance in terms of FR 53 from the eligible date, as per statutory requirement.

4. The applicant further submits that he had joined duty when his earlier suspension was revoked in the forenoon of 08.10.2009. He discharged his duties on 08.10.2009 and was paid salary for the period but he was denied the benefit of revision of salary consequent on the implementation of the 6th Pay Commission, based on which the revised pay was introduced with effect

from 01.01.2006. Since the suspension at Annexure A-2 was ordered after the implementation of the recommendations of the 6th Pay Commission, he is thus entitled to payment of subsistence allowance, based on the revised salary. However, he is being paid subsistence allowance under the pre-revised scales, which is illegal and arbitrary. He claims that he has been denied pay revision based upon Note 4 of CCS (RP) Rules, 2008, a copy of which he has produced at Annexure A-5. As per Note 4 of the CCS (RP) Rules, 2008 "*A Government servant under suspension, shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised pay structure will be subject to the final order on the pending disciplinary proceedings.*" He submits that the fact remains that Note 4 is not applicable in his case, as he was reinstated on 08.10.2009 and was on duty on 08.10.2009 and was suspended only thereafter. Since the order bringing into effect the pay revision was effected in 2008 and since the suspension order at Annexure A-2 was issued subsequently, he is entitled for subsistence allowance based on revised pay scales as he worked and discharged duties for one day ie. on 08.10.2009. Hence, he claims the 2nd relief, being, to direct the respondents to consider granting subsistence allowance due to him taking into account the revised pay introduced as per 6th CPC recommendation.

5. The applicant submits that as against these legitimate demands, he has been given only enhanced subsistence allowance by 10% and, that too, effective from 04.01.2012. He submits that he is actually entitled for enhancement of subsistence allowance by 50% with effect from 08.01.2010

ie. 3 months after being placed on suspension on 08.10.2009. He submits that there is no reason to deny this enhancement as no delay can be attributable to him during this period. Hence the respondents should have passed an order enhancing the amount of subsistence allowance effective from 08.01.2010. Inaction on this enhancement of subsistence allowance by 50% with effect from 08.01.2010 is illegal and arbitrary.

6. The respondents in their reply filed on 02.11.2016 have contested the above submissions. At the outset they contend that the O.A is barred by the law of limitation as held by the Hon'ble Supreme Court in **U.P Jal Nigam & Anr. v. Jaswanth Singh & Anr., 2006 (11) SCC 464**. In that case the Hon'ble Apex Court has mentioned that "*when a person is not vigilant of his rights and acquiesces with the situation and the acquiescence prejudices or there is a change of position, such person's writ petition cannot be heard after the delay on the ground that same relief should be granted as was granted to the persons similarly situated, but who were vigilant of their rights.*" The respondents submit that after the enhancement was allowed to the applicant on 04.01.2012 till he filed the O.A in February, 2016, none of the issues now agitated in the O.A were raised with them during all those years. Hence, the O.A is liable to be dismissed on the grounds of delay alone even without going into the merits of the case.

7. We have considered the above contention. Since the matter has been admitted by this Tribunal, we have decided to proceed with dealing it on merit, even though it does appear that the respondents' contention that the

matter is barred by limitation does have some teeth. As brought out earlier, there are two main issues which are to be decided in this O.A and we have heard Shri.Vishnu.S.Chepazhanthiyil, learned counsel for the applicant as well as Shri.N.Anilkumar, SCGSC, the learned counsel for the respondents in some detail. We have referred to the records provided by them as well as to the Acts and other provisions which have been referred to in the O.A., in the reply statement, as well as in the hearing/argument notes submitted during the hearing.

8. We first take up the matter of grant of the first relief, namely, for a direction to the respondents to grant enhanced subsistence allowance in terms of FR 53 from the eligible date as per the statutory requirements. In this regard, learned counsel for the applicant has submitted that in terms of FR 53, the authority placing an employee under suspension is bound to pass an order maintaining or increasing or decreasing quantum of subsistence allowance on the completion of three months of suspension. In the instant case it is argued that the applicant was suspended on 08.10.2009 and thus the respondents were bound to pass an order either maintaining or enhancing or decreasing the quantum of subsistence allowance on 08.01.2010. However, an order was issued enhancing subsistence allowance, only after 15 months (Annexure A-3), which is alleged to be a violation of the statutory provision binding on the respondents. Further it is argued that the enhancement as granted in Annexure A-3 should have been made effective from 08.01.2010 itself, as FR 53 clearly states that amount of subsistence allowance may be increased by a suitable amount not exceeding

50% of the subsistence allowance admissible during the period of first three months, if, in the opinion of the said authority the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant. It is argued by learned counsel that this principle has been blatantly violated as here the applicant cannot be held responsible in any way for prolongation of suspension. In such circumstances, it is submitted that he is eligible and entitled to be granted 75% of pay as enhanced subsistence allowance ie., 50% of the initial subsistence allowance at 50% of pay, which comes to 25% and therefore when added to the initial 50% already sanctioned, the employee becomes entitled to 75%. However, the learned counsel for the respondents contested this assertion. He submits that the applicant was granted enhanced subsistence allowance by Annexure A-3 dated 04.01.2012 by a 10% increase. It is submitted that the enhancement is not mandatory as per FR 53 as proviso to FR 53 (1)(ii) (a) reads as follow :

“FR 53(1)

(i)

(ii)(a)

provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows :

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount"

9. It is submitted by the counsel for the respondents that FR 53(1) does not stipulate that it is mandatory to either enhance or decrease the subsistence allowance soon after the first three months of suspension. It is argued that the proviso to FR 53(1)(ii)(a) only states that the relevant authority is competent to vary the amount of subsistence allowance and, that too, for any period subsequent to the period of the first three months. It is thus argued that he may choose not to do any variation at all. It is further submitted that an increase in the subsistence allowance cannot be claimed as a matter of right. Further, the authority competent to do so can choose to do so when he decides to do it. It is thus submitted that the disciplinary authority can also decide not to vary the quantum of subsistence allowance immediately after the first three months. In this case, the relevant authority competent to do so decided to enhance the subsistence allowance vide Annexure A-3 dated 04.01.2012 only from that date.

10. It is also submitted by the respondents that the Government of India, vide O.M's dated 17.06.1958 and 13.09.1974 has stipulated certain conditions for retrospective revision of subsistence allowance. The respondents have produced and marked this in the reply statement at Annexure R-3 and Annexure R-4 respectively. This has also been reproduced in Swamy's Compilation of FRSR, Part I General Rules at sub-para (e) of Point No.3 (Subsistence Allowance) under Government of India's Orders under FR 53 relating to "Retrospective revision". It is noted therein that "*Government do not consider it advisable that any orders*

revising the subsistence allowance should be given retrospective effect.” It is further noted that “.....In case an order for variation of subsistence allowance under FR 53 is passed by the competent (disciplinary or appellate) authority after quite some time from the expiry of the requisite six (now three) months and that authority is satisfied that the variation has got to be given retrospective effect for reasons to be recorded in writing and orders accordingly, the same would be valid and binding on all concerned.” The respondents' state that the applicant's claim in the O.A is only with respect to the enhancement of the subsistence allowance in terms of FR 53 from the eligible date as per statutory requirement. It is submitted by them that the relevant authority competent to do so did not find any reason for giving retrospective effect for the increase in subsistence allowance at the time of issuing Annexure A-3. Further, the applicant never raised any issue with respect to retrospective effect of subsistence allowance from the date of issue of Annexure A-3 ie. 04.01.2012 till the date of filing of the present O.A 27.12.2015, or even, when he was dismissed on 15.01.2013. Hence, the relief sought by the applicant with respect to retrospective revision of subsistence allowance is not tenable as it is a belated contention and is clearly affected by U.P. Jal Nigam (supra).

11. The respondents position is that is no provision mandating the Government to pronounce any new order relating to subsistence allowance immediately on expiry of three months, after the period of suspension. The wording in the proviso is “any period subsequent to the period of three

months ". They submit that any ruling or decision on the relief sought has to be pronounced on the basis of FR 53 only as indicated in the O.A and not under any other Service Rules affecting the official's terms of service. Such Rules may stipulate it as mandatory, but it is not so in FR 53.

12. We have considered the above arguments. We note that the relief sought in the O.A is against denial of enhancement of subsistence allowance from the eligible date is solely in terms of FR 53 provisions and is not under any other Service Rules, which may have governed the actual service of the applicant. Some of these Rules could very well prescribe other conditions. We have to thus look at the issue in terms of the provisions of FR 53 (1) (ii) (a) only. We are in agreement that it has not been stipulated therein that the subsistence allowance must be varied on completion of the first three months of suspension. It is clear that competent authority could decide not to vary the quantum of subsistence allowance after the first three months ie., neither increase nor decrease the subsistence allowance. As such, we hold that the provisions of FR 53 as it stands, read with the Government of India's orders earlier quoted (and produced at Annexure R-3 and Annexure R-4) does not provide that enhancement of subsistence allowance has to be granted or should be by a specific level or even be, as a matter of right, from the date when the period of three months has been completed ie., which in this case is with effect from 08.01.2010. Hence, we find that the first relief which has been sought for ie., enhancement of subsistence allowance by a factor of 50% to be due from 08.01.2010, lacks merit. We also note that as per Annexure R-3/Annexure R-4, if an order for variation of subsistence

allowance under FR 53 is passed by the relevant (disciplinary or appellate) authority competent to do so after quite some time from the expiry of the requisite three months and if the authority is satisfied that the variation has got to be given retrospective effect for reasons to be recorded in writing and orders accordingly, the same would be valid and binding on all concerned. However, here the respondents have submitted that the authority did not find any reason for giving the retrospective effect for the increase in subsistence allowance at the time of issuing Annexure A-3 and that, therefore, is the decision of the authority and has to be accepted.

13. The next issue to be considered is relating to the second relief sought ie., grant of subsistence allowance due to the applicant taking into account the revised pay introduced by the 6th CPC. The arguments provided by the applicant have already been summarised in our earlier paragraphs. In this regard, we note that the respondents in paragraph 6 of their reply have already accepted that, in the instant case, as the applicant was reinstated on 08.10.2009 and as the W.P.(C) challenging the Tribunal's order was still pending on that date before the Hon'ble High Court of Kerala, he is entitled to the revised pay on 08.10.2009 as well as the consequential subsistence allowance based on the revised pay as on 08.10.2009. It has been submitted by the respondents that the applicant was eventually dismissed from service and the subsistence allowance, based on revised pay was thus due to him for the period from 09.10.2009 (day after date of suspension) to 15.01.2013 (the date of his final dismissal from service). As such, orders were issued by the 3rd respondent, who has filed the reply on behalf of all the respondents (the

Senior Superintendent of Post Offices, Thiruvananthapuram) to refix his pay and to revise the subsistence allowance. This order has been produced by the respondents at Annexure R-5. Accordingly, it is submitted that the amount due to the applicant has been paid on 29.06.2016 ie., after he filed the O.A., as detailed below :

Particulars	Amount (in Rs.)
Difference in pay and allowance for 08.10.2009	Rs.149/-
Arrears of subsistence allowance 09.10.2009 to 15.01.2013	Rs.149530/-
Total arrears	Rs.149686/-
Outstanding amount of HBA and Interest recovered and credited under UCR	Rs.142323/-
Amount recovered as per SSP's letter No.Vig/Misc/2016 dated 23.05.2016	Rs.2376/-
Balance amount paid to the applicant on 29.06.2016	Rs.4987/-

14. It is submitted by the respondents that in view of the above payment, the second relief sought for has been granted and is thus infructuous. However, the learned counsel for the applicant in his argument note submits that the recovery effected from the amount due as indicated in above table is totally unjustified, especially when the issue of revised subsistence allowance was pending consideration in this O.A. As per his contention the respondents could not have recovered the amount due under the second relief, once this O.A was admitted to file on 08.04.2016. He submits that under the operation of Section 19(4) of the Administrative Tribunals Act, 1985, the respondents are statutorily barred from taking a decision in respect of issues raised in the O.A and pending consideration

before the Tribunal, after the O.A has been admitted. In such circumstances, recovery made by the respondents is totally illegal and they are thus bound to pay the applicant Rs.1,48,530/-.

15. In this regard, Section 19(4) of the Administrative Tribunals Act, 1985 states as follows :

19(4). Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules.

The learned counsel for the respondents has pointed out that Section 19(4) only stops respondents passing any orders touching upon the “subject-matter of the application”. The subject-matter/grievance redressal sought for in this application related only to the grant of enhanced and revised subsistence allowance. The question of recovery from subsistence allowance has not been raised in the O.A. The applicant further did not amend the O.A seeking a relief against such a recovery. The recovery thus effected, therefore, is not a matter relating the subject matter of the application and thus Section 19(4) does not apply. Only if the relief from recovery was also made one of the reliefs sought in the O.A., would the provisions of Section 19(4) would come into play is his contention. Apart from this, the applicant has sought reliefs under FR 53 only, which means that, he accepts, suo moto, all the provisions and subsequent orders relating to FR 53, as otherwise, he would have challenged the ruling of recovery. It

appears that the respondents are invoking the points given in Government of India's orders brought out in Swamy's Compilation (supra) under Point No.5 under FR 53 relating to "Recoveries from subsistence allowance". It is indicated therein that recovery of certain deductions which fall under the category of "Compulsory Deductions" should be enforced from subsistence allowance. This includes at para 2 (iii) of point 5 "*the repayment of loans and advances taken from Government at such rates as the Head of the Department deems it right to fix.*" At Paragraph 6 of the reply statement repeated at paragraph 13 above, the recovery from subsistence allowance is being made for the outstanding amount of House Building Advance (HBA) and interest. It, therefore, appears that this would fall under the head of "Compulsory Deductions", which are allowed as a recovery from subsistence allowance. We, however, note that the further recovery of Rs.2376/- as "amount recovered as per SSP's letter dated 23.05.2016" might not be allowable as per the instructions at 4(iii) under point No.5, under the Government of India orders under FR 53 as shown in Swamy's (supra). We are not going into this issue at this stage as we are in agreement with the stand that unless relief from recovery was also made part of the subject matter/redressal of grievances in the reliefs sought in the O.A under Section 19(4), it does not affect the decision in the O.A. As pointed out by the respondents, the applicant could have made an effort to amend the O.A to make this a part of array of reliefs sought, which has not been done. Hence, taking a combination of above factors, we do not hold that the recoveries made by the respondents from the subsistence allowance granted on the basis of the revised pay after the 6th Pay Commission, is

something that needs adjudication and that provisions of Section 19(4) are affected. We, therefore, hold that the relief sought by applicant at Sl.No.2 of the reliefs has been already granted by the respondents.

16. For all the above reasons, we do not find any merit in the reliefs sought in the O.A and the same is dismissed after consideration, for lack of merit. No order as to costs.

(Dated this the 16th day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00134/2016

1. **Annexure A-1** – A copy of the order dated 02.06.2009 in O.A.No.279/2008 of this Hon'ble Tribunal.
2. **Annexure A-2** – A copy of the Order No.PF/DRN/MOF dated 08.10.2009 issued by the 4th respondent.
3. **Annexure A-3** – A copy of the Order No.F1/3-1/04-05 dated 04.01.2012 issued by the 3rd respondent.
4. **Annexure A-4** – A copy of the representation dated 22.12.2011 to the Director of Postal Services.
5. **Annexure A-4(a)** – English translation of Annexure A-4.
6. **Annexure A-5** – A copy of the Note 4 of CCS (RP) Rules, 2008 (relevant portion).
7. **Annexure R-1** – A copy of the interim order dated 27.08.2009 in WP(C) No.24699/2009.
8. **Annexure R-2** – A copy of the judgment dated 26.07.2016 in WP(C) No.24699/2009.
9. **Annexure R-3** – A copy of the O.M.No.F.19(4)-E IV/55 dated 17.06.1958.
10. **Annexure R-4** – A copy of the O.M.No.1(1)-E IV(A)/74 dated 13.09.1974 issued Government of India, Ministry of Finance.
11. **Annexure R-5** – A copy of the letter No.C/Pay fixation/2016 dated 11.05.2016 issued by the third respondent.
