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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

* * * *

Date of Decision: 28.08.1992

OA 2130/90

Dr. JAGDISH KUMAR ARORA ... APPLICANT.

Versus

C.S.I.R. & ANR. ... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI SANT SINGH.

For the Respondents ... SHRI A.S. DHUPIA.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

J_U_D_G_E_M_E_N_T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is Junior Technical Assistant, CSIR, has assailed a letter dated 9.11.89 wherein the applicant was informed that with regard to payment of arrears of pay and allowances for the suspension period, the same could be considered after finalisation of the criminal proceedings as soon as the decision of the court is received, the matter will be considered immediately.

2. The applicant has claimed the relief that the applicant be paid arrears of pay and allowances together with interest @ 18% per annum for the period of suspension from 9.5.77 to 19.12.79 within a stipulated period and further, the cost be awarded.

3. The facts of the case are that the applicant is working as Junior Scientific Assistant since 1.4.72 in the pay scale of Rs.425-700. The applicant was appointed in CSB under CSIR in the same scale of pay. The applicant is holding the same post and the same pay scale since 1972.

4. The applicant was placed under suspension w.e.f. 9.5.77 vide Memo dated 10.5.77 (Annexure A-2). FIR No.129 lodged by the Delhi Police under Section 452, 324, 427 read with Section 34 IPC against the applicant and the applicant was placed under suspension. The said suspension order was revoked by the Chief of Administration, CSIR, vide order dated 19.12.79 (Annexure A-3). However, a separate order which was required under the statutory provisions for the treatment of the period of suspension was however not issued and the said period of suspension was not being regularised by the respondents. The applicant was paid subsistence allowance @ 50% only during the said period of suspension. The applicant has also assailed withholding of his annual increments at EB stage in another OA 146/90, which is pending. In spite of the repeated representations the release of pay and

allowances for the said period of suspension which was revoked by the Competant Authority suo_moto, the orders have not been issued for the payment of the pay and allowances of that period, and the applicant was informed that the said period shall be finally considered after the decision of the criminal case.

5. The respondents contested the application and stated that the order dated 9.11.89 was addressed to Smt. Kaushalya Devi, mother of the applicant and the applicant cannot treat the same as giving arise of a cause of action. This application is hopelessly barred by time because the suspension order of the applicant was revoked on 9.12.79 and the applicant represented on 15.1.80 for the payment of the balance pay and allowances due for the period from 9.5.77 to 19.12.79 and his representation was considered by CSIR Headquarters and in view of the provisions under FR 54(B)(6) that the question of payment of pay and allowances to the applicant for the period of suspension can be taken up only after the finalisation of court proceedings. He was, therefore, informed on 29.2.80 (Annexure R-4). The applicant made another representation on 29.7.80 and he was again replied on the same grounds. The applicant again made representation on 1.5.81 and he was again informed by the Memo dated 25.6.81 (Annexure R-7) that the payment of difference between pay and

allowances and subsistence allowance can be made only after the conclusion of the court case. Thus, on the point of limitation it is stated that the applicant is actually assailing the order on 25.6.81 which was the final order passed by the Vice President, CSIR, taking help of a communication made to Smt. Kaushalya Devi, mother of the applicant on 9.11.89 which is not justified.

6. On merit it is stated by the respondents that it is not mandatory on the part of competent authority revoking the suspension order to issue an order about regularisation of pay and allowances for the period of suspension and in cases where the suspension has been revoked pending finalization of the criminal case proceedings. FR 54(b)(6) provides that where suspension is revoked pending finalization of the disciplinary or the court proceedings any order passed under Sub-rule (1) before the conclusion of the proceedings against the Govt. servant shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in the Sub-rule (1) who shall make such order according to the provisions of Sub-rule (3) or Sub-rule (5), as the case may be. Since court proceedings have not been concluded no order with reference to pay and allowances during suspension could be passed. Further, it is also

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stated that the suspension order was not revoked suo-moto but it was revoked on the representation of the applicant and the applicant is entitled to payment of full pay and allowances only after the conclusion of court proceedings and that, too, if he is fully exonerated.

7. I have heard the learned counsel for the parties at length and have gone through the records of the case. The learned counsel for the applicant has raised an objection that the matter does not come within the scope of Single Bench but it is not so, the order issued by the Hon'ble Chairman in exercise of the powers conferred under Sub-section (6) of Section 5 of the Administrative Tribunals Act, 1985, No.1/32/87-JA dated 18.12.91 in the schedule under Clause 12 the Single Bench is empowered to hear cases relating to grant, refusal or recovery of all allowances. This amply covered the scope of the present application as the applicant in the application has prayed for pay and allowances for the period of suspension from 9.5.77 to 19.12.79. The applicant was also given time to approach the Hon'ble Chairman if he has any doubt in this respect, by the order dated 28.7.92. In view of the above proceedings there is no ambiguity in the order of the Hon'ble Chairman regarding the jurisdiction of hearing cases by the Single Bench and since the matter has already been heard, so the matter

cannot be said to be not covered by the said order issued by the Hon'ble Chairman dated 18.12.91.

8. The present application has been filed by the applicant on 4.10.90. The applicant is claiming the pay and allowances and the suspension period from 9.5.77 to 19.12.79. The respondents, in their reply, annexed representation of the applicant dated 15.1.80/1.2.80, reply to these representations was given on 19.2.80 where the applicant was informed that the payment of pay and allowances can be taken only after the finalization of the court proceedings. The applicant made another representation on 29.7.80 and then again on 1.5.81. The applicant was informed by the Memo dated 25.6.81 and he was again informed that the payment of difference between pay and allowances and subsistence allowance for the period of suspension can be determined only after the conclusion of the court case. Thereafter the applicant again made representation in 1983 and again he was informed by the letter dated 15.7.83 that his case has been considered by the Vice President that he can be considered for service matters as per rules. This does not mean that the case of the applicant for payment of pay and allowances for the suspension period should also be allowed. It appears that Smt. Kaushalya Devi, mother of the applicant made certain representations

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in October, 1989 and on that representation which also covers certain other facts, the applicant was again informed by the impugned letter dated 9.11.89. Thus, the applicant has failed to assail the order of 1981 at the proper time and now in view of Section 21 of the Administrative Tribunals Act, 1985, the limitation has expired. The repeated representation, as held by the Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh, do not add the period of limitation if already expired. The respondents have only referred the consideration of the payment of pay and allowances of the suspension period in view of the statutory provisions laid down in the FR 54(B)(6). In view of this fact, the present application is hopelessly barred by time.

9. When a specific objection to the limitation has been taken then the case is to be decided on that plea of limitation.

10. After considering all these facts and circumstances the present application is dismissed as barred by limitation leaving the parties to bear their own costs.

J.P. Sharma
20.01.90
(J.P. SHARMA)
MEMBER (J)