

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.3110/90

Date of decision: 8.4.93

Nagaraja Srinivasan .. Applicant.

versus

Union of India &
others .. Respondents.

Sh.G.K.Aggarwal .. Counsel for the applicant.
Sh.M.L.Verma .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.N.V.Krishnan, Vice Chairman(A)
The Hon'ble Sh.B.S.Hegde, Member(J).

- 1) Whether Reporters of the local papers
may be allowed to see the judgement? ✓
- 2) To be referred to the Reporters or not? ✗

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J U D G E M E N T (ORAL)

(Hon'ble Sh.N.V.Krishnan, Vice Chairman(A))

The applicant was an employee under the third respondent, Director Civilian Personnel, Naval Headquarters, Sena Bhawan, New Delhi. He was suspended by an order dated 25.10.90 (Annexure A-2) and subsequently he has been dismissed from the service under clause I of Article 310 of the Constitution of India read with rule 19 (3) of the C.C.S. (C.C.A.) Rules, 1965 (Annexure A-3).

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2. The applicant's grievance is that ever since he was suspended, the quantum of subsistence allowance paid to him under FR 53 was not revised upwards though he had made a number of representations to the government. He has, therefore, prayed that the respondents should be directed to give him increased subsistence allowance for the period from 25.1.91 to 17.8.92 in accordance with the provisions of para (1) of the proviso to FR 53(1)(ii) (a) alongwith interest.

3. The applicant also claims that he was not at all responsible for any delay in concluding the proceedings which commenced with his suspension.

4. The respondents have filed a reply contesting these claims on many grounds.

5. We have heard the learned counsel for the parties. Sh.M.L.Verma, learned counsel for the respondents did not press the issue of limitation. He, however, contended that the applicant ought to have filed an appeal under rule 23 of the C.C.A., Rules 1965. It is his view that an appeal could have been filed either under Clause(1) or Clause(iv) of rule 23. We have carefully considered this matter. Clause(i) provides for an appeal against an order of suspension which is quite different from an order of fixing the rate of subsistence allowance. Similarly, Clause(iv) relates to orders denying or varying to the disadvantage of an

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employee his pay and allowances or of the provisions of any rule and agreement relating to such emoluments. Obviously pay and allowances cannot refer to subsistence allowance, which is entirely different category known by that name only. We, are therefore, of the view that no appeal lies against fixing the rate of subsistence allowance and therefore, the applicant cannot be compelled to go in appeal.

6. Another point raises in the reply is that his requests for review were considered and he was informed of the government's decision. The learned counsel referred to the reply filed in this connection which states that taking into consideration the gravity of the offence where the security of the State is involved, full investigation involving a number of other government employees was necessary. This is the reason why the suspension continued for a long time. The respondents do not have a case that the applicant was responsible for prolonging his suspension.


7. We are of the view that the only ground ^{that is} ~~is~~ germane for considering the review of the quantum of subsistence allowance in accordance to the provisions of FR 53 is ~~the~~ whether, in the opinion of the competent authority, the period of suspension had been prolonged for reasons attributable to the government servant, which are to be recorded in writing.

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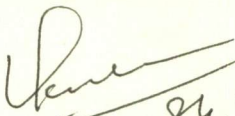
8. As the respondents do not have any such case, we are satisfied that ~~case~~ the applicant is entitled to have the subsistence allowance increased in accordance with the provisions of FR 53.

9. We, therefore, dispose of this application with a declaration that the applicant was not at all responsible for prolonging the period of suspension for such a long time and therefore, he is entitled to an increase in the quantum of subsistence allowance in accordance with the provisions of para (i) of the proviso under FR 53 (1) and accordingly, the respondents are directed to refix the quantum of subsistence allowance for the period 25.1.91 to 17.8.92 within a period of two months from the date of receipt of this order in accordance with law and disburse the arrears due to the applicant within fifteen days therefrom.

10. The application is disposed of accordingly.


(B.S. Hegde)

Member (J)


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(N.V. Krishnan)

Vice Chairman (A)