

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2005/93

New Delhi, date the 10th January, 1994

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

Hon'ble Mr. B.S. Hegde, Member (Judicial)

Sh. Chander Pal Singh
Son of Sh. Amar Singh
Village and P.O. Banel,
Distt. Buland Shahar (U.P.)

... Applicant.

(By Advocate Sh. S.K. Gupta, counsel)

Versus

1. Secretary,
Department of posts,
Dak Tar Bhavan,
Parliament Street, New Delhi.
2. Post Master General,
U.P. Circle, Agra (U.P.)
3. Sr. Superintendent of Post Offices,
Buland Shahar (UP)

... Respondents.

(By Advocate Sh. George Paricken with
Sh. P.P. Khurana)

ORDER (ORAL)

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

The applicant has filed this OA seeking the following reliefs:-

- a) To direct the respondent to hold in abeyance the order dated 10.3.1993 till the pendency of this application or alternatively
- b) To make the payment of subsistence allowance in accordance with the judgement of Hon'ble Bangalore Bench in case of Peter J.D'sa and another V. Superintendent of Post Offices, Udipi and others (1989) 9 ATC 225.

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2. The applicant is an extra Departmental Sub-Post Master at Benel, District Buland Shahar(UP). He was put off from duty by the order dated 10.3.93 (Ann.A-1) as a disciplinary proceeding was contemplated against him. No charge sheet has yet been issued to him.

3. He preferred an appeal vide Ann.A-4 dated 21.6.93 to the Post Master General (UP) circle, Agra pointing out that he has been put off from duty without serving any charge by the order dated 10.3.1993. He, therefore, prayed that he should be taken back on duty. As no reply has been received by the applicant from the respondent he filed this OA on 22.9.93 seeking the above reliefs.

4. On 4.10.1993, we observed that as Ann.A-4 appeal was filed only on 21.6.1993, this OA was premature in respect of that appeal. We, however, notice that the prayer regarding grant of subsistence allowance based on the judgement of Bangalore Bench in Peter J.D'sa and others V/s Superintendent of Post Office Udupi and others (1989) 9 ATC 225 does lie. We, therefore, directed that this OA will be considered only in respect of this prayer regarding grant of subsistence allowance. Notice was issued to the respondents to file reply.

5. Respondents have filed a reply in which in regard to payment of subsistence allowance it is

stated that ED employees are not entitled to any subsistence allowance in terms of EDAs (Conduct and Services) Rules, 1964 (Rules for short) and the DG's instructions dated 23.3.78, both produced as Ann.A.6. As a matter of fact the relevant rule is 9(3) and note Rule 9(2).

6. The learned counsel for the respondents was asked to state whether the judgement of the Tribunal in Peter J.D'sa (Supra) has become final. He submitted that no SLP has been filed against this decision, to his knowledge. We, therefore, take it that this judgement has become final. In Peter J.D'Sa's case the Tribunal held, inter alia, as follows:-

"(i) We strike down Rule 9(3) of the 1964 Rule as violative of Article 14 of the Constitution of India. But notwithstanding the same, the Govt. of India is directed to re-examine the matter in its entirety, and frame a new set of rules, providing for payment of subsistence allowance, with due regard to the unique nature of EDA service and all other relevant matters, and make payment thereof to the applicants in conformity with those Rules. We grant a period of 4 months to the Government of India, to frame the new set of Rules and 3 months thereafter to make payment to the applicants in conformity with those Rules.

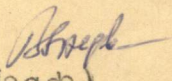
It is clear from the above that Rule 9(3) has been struck down and the Government of India was directed to frame new set of rules after considering all aspects.

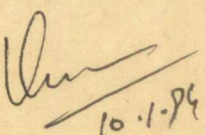
7. The only question, therefore, is whether in these circumstances the applicant is entitled to any subsistence allowance. Admittedly, the Govt. of India has

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not framed any rules as directed in J.D.Sas case. The applicant, is therefore, entitled to subsistence allowance which is the implication of the aforesaid judgement of the Tribunal. As no rule has been framed we think it appropriate to issue some direction. The stable E.D. employees are required to have a / source of income other than the allowance given to them as E.D. employees. Their allowances is also fixed on this consideration and it is less than the pay and allowances of a regular employees. Therefore, we feel that they should get the subsistence allowance ⁱⁿ ~~and~~ the same manner as regular employees i.e. under the F.R.

8. In the circumstances, we allow this application is in part, with a direction to the first respondent to sanction to the applicant subsistence allowance in terms of Fundamental Rules ^{as those} ~~and if though~~ Rules are applicable to the applicant from the date he was put off duty treating this as suspension for this purpose. Subsistence allowance be paid to him within four months from the date of receipt of this order and OA is disposed of as above without cost.


(B.S. Hegde)
Member (J)


10.1.84
(N.V. Krishnan)
Vice Chairman (A)