

* OPEN COURT *

* CENTRAL * ADMINISTRATIVE * TRIBUNAL *
* ALLAHABAD * BENCH *
* ALLAHABAD *

Original Application No. 521 of 1998

Dated, this the 26th day of August, 2003

HON'BLE MAJ GEN K.K.SRIVASTAVA, MEMBER-A
HON'BLE MR. A.K.BHATNAGAR, MEMBER-J

R.B.Saxena, son of late Shri Bhairo Prasad Saxena,
resident of 866, Old Katra, Allahabad.

... ..Applicant.

* BY Advocate : Shri A.Rajendra *

* Versus *

1. Union of India through General Manager(P),
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, D.R.M. Office, Allahabad.
3. The Sr. Divisional Personnel Officer,
Northern Railway, D.R.M. Office,
Allahabad.
4. The Sr. Divisional Electrical Engineer,
(T.R.D.) Northern Railway, D.R.M. Office,
Allahabad.
5. The Divisional Electrical Engineer(TRD)
Northern Railway, Aligarh.

... Respondents.

* BY Advocate : Shri Amit Sthalekar *

* ORDER (ORAL) *

BY HON'BLE MAJ GEN K.K.SRIVASTAVA, MEMBER-A

In this O.A., filed under section 19 of
Administrative Tribunal Act, 1985, the applicant
has prayed for the following relief(s) :

.....2/-



- " (a) to issue a suitable order in the nature of certiorari, quashing the impugned order dated 02.03.1990 and 23.2.1998 passed by respondent no.5 and 4 respectively Annex. 2 and 1 of the Compilation No. I.
- (b) to issue a suitable order, or direction to the respondents to pay the subsistence allowance calculated @ 3/4th of the salary drawn by applicant after passing the six months from the date of suspension dated 19.05.1991 till 31.5.91 including 18% interest per annum on the said arrear amount till the date of payment to applicant.
- (c) to issue any suitable order to which this Tribunal deem fit and proper under the circumstances of the case. "

2. The facts of the case are that the applicant was working as Senior Clerk at Aligarh in the respondents' establishment. He was placed under suspension on 19.5.1988 and his subsistence allowance was fixed at 50% of his salary and other emoluments. The applicant represented for review of his subsistence allowance to increase @ 3/4th or 75% through representation dated 28.10.1988. The applicant was served with a major penalty charge-sheet dated 17.2.1989 on 03.03.1989. The inquiry was held at Delhi. The applicant has been filing representations for the review of his subsistence allowance but the respondents did not take any action. Inquiry concluded on 31.07.1989 and on conclusion of disciplinary proceedings applicant was removed from service on 30.05.1991. The applicant has filed this O.A. for claiming 75% of subsistence allowance for the period from 19.05.1988 till 30.05.1991 alongwith 18% interest thereon. The claim of the applicant has been contented by the respondents by filing Counter Affidavit.

3. Shri A. Bajendra, learned counsel for the applicant submitted that the action of the respondents, is illegal because the case of the applicant regarding subsistence allowance was never reviewed. There has been no delay on the part of the applicant and he always co-operated for conclusion of the disciplinary proceedings

yet the respondents did not reviewed the case of the applicant and did not increase his subsistence allowance from 50% to 75%. The learned counsel for the applicant also argued that there is no specific reply by the respondents in this regard. Though the applicant had been removed from services on 30.05.1991 yet he was entitled for enhanced subsistence allowance from the due date.

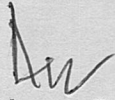
The Learned counsel for the applicant also argued that though the inquiry was concluded on 31.07.1989 yet the respondents did not re-instate the applicant which they ought to have ^{done} at least up to the date he was removed.


4. Resisting the claim of the applicant Shri Amit Sthalekar, learned counsel for the respondents submitted that the applicant was removed from the services on 30-05-1991 and he has not challenged the order of removal. The Learned counsel for the respondents submitted that payment of subsistence allowance is not ^{an} recurring cause of action. The applicant had represented for the payment of subsistence allowance by representation dated 05.12.1997 and he was informed by order dated 02.03.1990 that he was not entitled for enhanced subsistence allowance. The Learned counsel argued that raising issue now in 1998 is barred by period of limitation. Filing of subsequent reminders will not extend the period of limitation.

5. We have heard counsel for the parties, considered their submissions and perused records. The main ground taken by the respondents' counsel is that the O.A. is barred by period of limitation. The applicant in para (xxxii) of O.A. has stated that the impugned order dated 02.03.1990, passed by the respondent no. 5, is arbitrary, illegal and based on surmises and conjectures. This averment of the applicant establishes beyond doubt that the applicant was ^{aware} know about the order

dated 02.03.1990 and the applicant preferred filing representation after representation instead of approaching this Tribunal within the period of limitation as provided under section 21 of Administrative Tribunal Act, 1985. We are inclined to accept the submission of the respondents' counsel that payment of subsistence allowance is not recurring cause of action, It is an admitted fact that the applicant was removed from the services in the year 1991 and, therefore, filing representation after representation after his removal will, in no case, extend the period of limitation. The applicant has placed reliance on the judgment of Hon'ble Kerala High Court in the case of Chacko Vs. Vythiri Plantation Ltd. 2000(86) FLR 389 and also the judgment of Hon'ble Supreme Court in case of M.R.Gupta Vs. U.O.I. & Others 1995 SCC(L&S) 1273. We have perused both the judgments. The Judgment of the Hon'ble Supreme Court in the case of M.R.Gupta Vs.U.O.I & Others is that of pay fixation and, therefore, the case is easily distinguishable and will not help the applicant. Even the case of Chacko (Supra), decided by the Hon'ble Kerala High Court pertains to delay in payment of subsistence allowance and not regarding enhancement of subsistence allowance. Hon'ble Kerala High Court allowed the payment of interest at 12% on the subsistence allowance for delayⁱⁿ payment. In the present case no such controversy is involved. The case is regarding enhancement of subsistence allowance. Therefore, the case of Chacko will also not be^{be} helpful^{by the} to applicant.

6. In the facts and circumstances and aforesaid discussion, we do not find any^{in good} ground for interference. The O.A. is highly time barred and is accordingly dismissed with no order as to costs.


Member J


Member A

BRIJESH/-