

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration No. 3 of 1986

Phool Chand Sonkar Applicant

Vs.

Sr. Superintendent
RMS 'G' Division, Gorakhpur Respondents.
and another.

Hon. D.S.Misra, Administrative Member
Hon. G.S.Sharma, Judicial Member

(By Hon. G.S.Sharma, Judicial Member).

This application under section 19 of the Administrative Tribunals Act (No. 13 of 1985) has been moved by the petitioner who is under suspension from 21.7.1982, for the enhancement of subsistence allowance.

The petitioner, while posted as Cashier in the office of HRD., R.M.S 'G' Division, Gorakhpur was placed under suspension on 21.7.1982 in contemplation of certain proceedings against him. The petitioner, ^{later on} ~~on representation~~ knew that there is a charge of embezzlement of Rs.20,000/- against him. He was charge sheeted for the same departmentally and a criminal case under section 409 IPC is also pending against him in the Court of a Magistrate at Gorakhpur. The subsistence allowance payable to the petitioner on suspension was once increased by 2% and ^{then} ~~another~~ by 3% with effect from 21.10.1982 and 13.5.1983 respectively and since then there has been no increase in the subsistence allowance, though the petitioner is not responsible for the delay in concluding the departmental proceedings pending against him.

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The petition has been contested on behalf of the respondents and it has been alleged on their behalf that the subsistence allowance of the petitioner has already been reviewed twice and since he is not cooperating with the proceedings instituted against him, he himself is responsible for the delay and his suspension is being prolonged by the petitioner himself. There are serious charges against the petitioner and he is not entitled to any enhancement in the subsistence allowance. It is also alleged that the petitioner should have preferred a review petition to the Director General (Post), New Delhi against the order of the appellate authority refusing to enhance the subsistence allowance and this petition is not maintainable in law. The petitioner filed a rejoinder with the allegation that there is no *prima-facie* serious charge against him and after the expiry of first 90 days of suspension, he is entitled to the increase of 50% in the subsistence allowance and he is not responsible for the delay in the proceedings pending against him and the allegation to the contrary of the respondents is not correct.

We have heard the learned counsel for the parties and have also carefully perused the record. It has not to be seen at this stage whether the charge in connection with which the petitioner was placed under suspension can be substantiated against him or not. It ~~is~~ suffice to say that the petitioner was placed under suspension on 21.7.1982 when it was

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contemplated to initiate proceedings against him for misappropriating Government money to the tune of Rs.20,000/- Undisputedly, the subsistence allowance was increased twice to the extent of 2% and 3% with effect from 21.10.1982 and 13.5.1983 respectively and since then there has been no increase in the subsistence allowance. The respondents ~~did~~ allege in paragraph 9 of their Counter Affidavit that the applicant is not cooperating with the proceedings instituted against him and he is responsible for his prolonged suspension. This allegation is vague and when at the time of arguments, the learned Standing Counsel for the respondents was called upon by the Bench to bring some specific instances in support of this allegation, he could furnish no such instances. We are, therefore, of the view that the petitioner is not responsible for his prolonged suspension and the charge against him that he is not cooperating with the prosecution to conclude the proceedings against him is devoid of any force. Annexure C.A.-1, which is an extract of Rule 29 relating to payment of subsistence allowance lays down that competent authority may vary the amount of subsistence allowance for any period exceeding the first 3 months by increasing the same to a suitable amount not exceeding 50% of the initial subsistence allowance, if in the opinion of that authority, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the Government servant. In this case,

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there is no finding of the competent authority or the appellate authority of the petitioner to the effect that the prolongation of the suspension of the petitioner is directly attributable to any act or omission of the petitioner himself. Under the rules, the petitioner is, therefore, entitled to an increase in the subsistence allowance by a suitable amount not exceeding 50%. As in this case, there are serious charges against the petitioner, it may not be expedient to enhance the subsistence allowance to the full extent of 50% permissible under the rules but at the same time the increase of 2% and 3% made in 2 instalments does not appear to be adequate. The petition should, therefore, succeed, *in part.*

In the result, the petition is allowed to this extent that the petitioner shall be entitled to an enhancement in his subsistence allowance to the extent of 10% more with effect from today. In case the departmental proceedings and the criminal case pending against him are not concluded within 6 months, the petitioner may move the competent authority again for enhancement in his subsistence allowance. In the meantime, the respondents shall make every possible endeavour to get the criminal case and departmental proceeding, against the petitioner expedited. In the circumstance of the case, the parties shall bear their own costs.



Administrative Member

Shri 4/6/86

Subramanian
4/6/86
Judicial Member.

Dated June, 4, 1986
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