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Central Administrative Tribunal, Allahabad.
Registration O.A.No.877 of 1987

Hemant Kumar Saxena ... Petitioner
Vs.

Union of India & others ... Respondents.

Hon.Ajay Johri,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

In this petition under section 19 of the Administrative Tribunals Act XIII of 1985, the applicant while working as Care Taker in the office of the Income Tax Officer,Circle I,Agra in 1986 was involved in a criminal case pertaining to the encashment of certain forged vouchers and on the First Information Report lodged by the Income Tax Officer, he was arrested by the Police and on his remaining under custody for more than 48 hours, was deemed to be under suspension from 20.3.1986. The applicant was allowed to withdraw the subsistence allowance admissible under F.R.53 (1) subject to the usual conditions. On his release from jail, the applicant is shown to have shifted to his home district Rewa and sent applications for payment of subsistence allowance from Rewa but the respondents did not pay the subsistence allowance to him on the ground that he had left his headquarters without obtaining any leave required under the rules and under the law the subsistence allowance could be paid only at Agra and not at Rewa. The applicant was also served with the notice dated 10.6.1986 by the Inspector Assistant Commissioner Agra respondent no.2 to show cause within a week why the disciplinary

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proceedings should not be initiated against him for the loss caused by him to the Government as well as for his misconduct. The applicant was also awarded a confidential adverse entry for the year 1985-86 and the same was communicated to him by the respondent no.2 vide his letter dated 11.6.1986. When the applicant did not get the subsistence allowance, he filed this petition on 21.9.1987 for a direction to the respondents to pay him the subsistence allowance for the period of the suspension and also for a further direction that till the criminal case against the applicant is decided, no departmental proceedings should be initiated against him in view of the show cause notice dated 10.6.1986 as the same may prejudice him in his defence in the criminal case.

2. The petition has been contested on behalf of the respondents and it has been stated in the reply filed on their behalf by the Income Tax Officer Circle I, Agra- respondent no.3 that the applicant had first stolen the refund vouchers from the office and after forging the signatures of the Income Tax Officer, Sri M.M.Lal, he encashed the same fraudulently and on the F.I.R lodged by the Income Tax Officer, he was arrested by the Police on 13.6.1986. He was accordingly deemed to be under suspension under the law. Under the policy of the Govt. of India, an official under suspension has not to leave the station without the permission of the competent authority and as the applicant left his headquarters without obtaining any leave and when he sent the application from Rewa for subsistence allowance, he was required to explain the circumstances under which

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he had left the headquarters. The applicant explained some circumstances and requested for being excused but he still did not apply for any leave for remaining out of the headquarters. In this case, the investigation against the applicant is still in progress and the C.B.I has not submitted any charge sheet against him so far. Under the law, there is no bar to proceed departmentally against the applicant during the pendency of the criminal proceedings against him and as the applicant is absent unauthorisedly from his headquarters the subsistence allowance could not be paid to him and he is not entitled to any relief.

3. The applicant did not file any rejoinder and the undisputed position in this case, therefore, is that the applicant is still under suspension and he had left his headquarters after his release from jail in June 1986 and formerly he was living at Rewa and now at Allahabad and he has not ^{obtained &} ~~opted~~ any leave either for leaving the headquarters nor for living at a place other than his headquarters during the period of his suspension. It is also not in dispute that the criminal case has not been started against the applicant and the charge sheet has not been produced in Court in respect of the offences u/s.420/468/471 I.P.C for which the F.I.R. was lodged against him.

4. The contention of the applicant made before us was that under the rules, he could not be debarred from getting the subsistence allowance during the period of suspension for his leaving the headquarters without the permission of the competent authority. It was further contended

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that under F.R.53, the only requirement for the payment of the subsistence allowance is that the officer under suspension should furnish a certificate about his not being engaged anywhere during the period of suspension and as the applicant has already furnished such certificates, he is entitled to the subsistence allowance. So far as the last contention of the applicant is concerned, it appears to be correct. F.R.53 which provides for payment of subsistence allowance during the period of suspension does not lay down a condition that the delinquent has to live at his headquarters during the period of his suspension so as to entitle him to get the subsistence allowance. The Government of India vide O.M. No.39/5/56-Ests.A dated 8.9.1956 had directed that an officer under suspension is regarded as subject to all other conditions of service applicable generally to a Government servant and cannot leave the station without prior permission. As such, the headquarters of a Govt. servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to the competent authority changing the headquarters if it is satisfied that such a course will not put the Govt. at any extra expenditure like grant of travelling allowance etc., or other complications. Thus, even under this O.M., normally the official under suspension has to stay at his headquarters but it is not compulsory in all cases and the discretion has been given to the competent authority to change his headquarters if it does

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not involve any extra expenditure or other complications to the department. No rule has been shown on behalf of the respondents to disentitle the applicant from getting his subsistence allowance under the circumstances of ^{cause of} the case.

5. After a careful consideration of the whole matter, we are of the view that the respondents could not deny the subsistence allowance to the applicant merely on his leaving the headquarters without the permission of the competent authority. The competent authority is at liberty to deal with him departmentally for committing the breach of the standing orders by the applicant on his leaving the headquarters without permission. But he cannot be denied the subsistence allowance on any ground other than that contemplated by F.R.53. We are further of the view that the applicant living outside Agra cannot insist for getting the subsistence allowance anywhere outside Agra and for this he has to go to Agra to receive the payment. In case, he fails to do so, the respondents cannot be blamed for it. Regarding the other relief claimed by the applicant, we are of the view that nothing has been shown to us to prevent the appointing authority from proceeding against the delinquent departmentally for the misconduct and the monetary loss caused by him to the department till the criminal case against him is finalised. In the instant case, the criminal case has not yet been started against the applicant and as such, if the respondents so desire, they can

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proceed against him after serving the necessary charge sheet in the light of the show cause notice issued to him according to law and the provisions contained in Central Civil Services (Classification Control and Appeal) Rules, 1965. There is no other point for consideration in this case.

6. The petition is disposed of accordingly without any order as to costs.

Subramanian
MEMBER (J)

Subrahmanyam
MEMBER (A)

Dated: 13.9.1988
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