

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 7<sup>th</sup> day of June 1996.

Original Application no. 1899 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Sobha Ram, S/o Sri Heera Lal, R/o Katra Fateh Mohamood Khan, Etawah.

... Applicant.

C/A Shri K.S. Saxena.

Versus

1. The Union of India (Through General Manager Northern Railway, Baroda House, New Delhi.).
2. Divisional Superintending Engineer, (Co-ordination), Northern Railway, DRM office, Allahabad.
3. The Asstt. Engineer (SPL) PQRS/Northern Railway, Aligarh.

... Respondents.

C/R Shri A.K. Gaur.

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant has come to the Tribunal for following reliefs:-

- i. Payment of subsistence allowance at the rate of 3/4 of the pay w.e.f. 25.02.90 up to the date the applicant is put back to duty.

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ii. Non transfer of the applicant from his HQ/Etawah to other units during the period of suspension.

iii. payment of cost of the application.

3. The facts narrated by the applicant are that he was appointed as Casual Labour in the PQRS organisation at Etawah on 15.05.86. The applicant was involved in the criminal case and was sent to jail on 06.08.88 after he surrendered to the CJM Etawah. He was released on bail on 29.08.88 and made application on 07.10.88 informing the AEN/SPL about his arrest etc. The AEN/SPN placed the applicant under suspension vide ~~its~~ <sup>his</sup> order dated 22.10.88. Assistant Engineer /PQRS/ Etawah placed applicant under suspension w.e.f. 08.11.88, while under suspension the applicant <sup>was</sup> arrested <sup>A</sup> in another criminal case on 25.02.90. The applicant claims that he was transferred vide letter dated 21.09.93 from Etawah to Fatehpur Sikri with other Gang men on 14.08.91 and he was transferred to Khurja on 27.07.92. He was transferred on 27.07.93 to Moradabad but he was not accepted at Moradabad and he was sent back to Allahabad Division. It is his contention that he was in Jail from 25.02.96 to 21.06.93 and could not have been transferred during this period. He has also claimed that he is still under suspension, he <sup>is</sup> ~~was~~ entitled <sup>to</sup> the payment of subsistence allowance at the rate of 3/4 of his pay. Applicant has contended that he has not been given suspension allowance inspite of very large number of representation made by him.

4. The respondents has given counter reply. The respondent state that the petitioner was not entitled to

subsistence allowance because he was not attending the office during suspension period and also because he was sent to jail after January 1990. It is also contended that the applicant is not entitled to suspension allowance because he did not inform the department about his arrest in this case.

5. The arguments of Shri K.S. Saxena learned counsel for the applicant and Shri A.K. Gaur learned counsel for the respondents were heard.

6. The first issue raised by the learned counsel for the respondents is that the application is time barred because the applicant is approaching the court in 1994 for suspension allowance which has not been paid in 1990. This arguments appears to have been made merely for the sake of making an argument. The respondents have not denied that the applicant was suspended in 1988 and his suspension is continuing. They have not denied that he was being paid ~~1/2~~ of his last pay drawn as suspension allowance till January, 1990. The respondents have not denied that the applicant was in jail ~~from~~ February 1990, to June 1993. Denial of subsistence allowance which is given in lieu of salary would give an applicant a cause of action in such a case which will continue to operate from month to month till the payment is made.

7. The second justification for non payment of suspension allowance advanced in counter reply as well as oral arguments has been that the applicant did not attend the office during suspension period. This argument too is not tenable as the purpose of suspension is to keep an employee away from attending office. Besides

it has been held in the case of Zonal Manager, Food Corporation of India and others Vs. Khaled Ahmad Siddique 1982 Lap IC 1140 that direction to an employee to attend office during period of the suspension is illegal.

8. Yet another arguement advanced in favour of denial of suspension allowance by learned counsel for the respondents is that the applicant did not inform his superiors about his involvement and arrest in another case. It has also been mentioned by learned counsel for the respondents during arguement that ~~none~~ of the representations was received. The respondents have ~~not~~ denied that the applicant was in detention from Feb. 1990 to June 1993, when he necessarily has to be under suspension. It is true that the applicant was ~~du~~ bound to inform the Govt. about his arrest at the earliest opportunity. But failure to give this information is a misconduct of suppression of material information and renders ~~him~~ liable to disciplinary action for failure to report. It is not the case of the respondents that such an action has been initiated. In any case the applicant can not be denied suspension allowance even during the period of departmental enquiry for this misconduct. Besides the second letter which is part of annexure A-3 shows that the applicant had intimated the respondents about his detention in connection with another case.

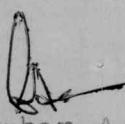
9. The learned counsel for the respondents has argued that the relief of payment of suspension allowance and of non transfer cannot be in one and two the same application as they are disparate reliefs not

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permissible within the scheme of the Administrative Tribunals Act and rules made there-under. This argument *prima facie* appears to have force. However the relief of non transfer arises from the relief of payment of suspension allowance. This issue will have to be decided in order to facilitate the payment of suspension allowance which can not be denied to the applicant. If we give direction to the respondents to make payment of suspension allowance the respondents would ask the applicant to go and report at Moradabad from where payment would be made. The authorities at Moradabad would require revocation of suspension and posting. The applicant would not be able to proceed to a new place of posting in view of his indigence. The applicant would thus be put in a situation in which remedy would be worse than the malaise. I, therefore, consider it necessary to cancel all transfer orders of the applicant made after his suspension.

10. In view of the discussion in the foregoing paragraphs, the transfer orders made after the suspension are set aside as arbitrary. The respondents are directed to make payment of the suspension allowance admissible to the applicant under FR-53 within three months of the date of pronouncement of this order from the office where the applicant was working at time of his suspension.

11. The respondents shall pay cost of the application as admissible under the rules to the applicant.



Member-A

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