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Mr. J.R. Kothari,
Upper Division Clerk,
Office of the Regional -
Provident Fund Commissioner,
Gujarat State,
Dalal Wada, Relief Road,
Opp. Electricity House,
Ahmedabad - 380 001.

.. Applicant

Versus

1. Regional Provident -
Fund Commissioner,
Gujarat State,
Dalal Wada, Relief Road,
Opp. Electricity House,
Ahmedabad - 380 001.

2. Shri K.S. Ponmayuram,
Assistant Provident Fund-
Commissioner,
Gujarat State,
Dalal Wada, Relief Road,
Opp. Electricity House,
Ahmedabad - 380 001.

.. Respondents.

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member

O R A L J U D G M E N T

(Dictated in Open Court)

1st December, 1987

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Heard learned advocates Mr. I.S. Supehia and Mr. J.D. Ajmera for the applicant and respondents respectively. In this case, the suspension orders have been passed on dated 26.7.1975 and the charge sheet has been furnished on 28.12.1978, as a result of the direction given by the High Court of Gujarat in S.C.A. No. 150 of 1978 on dated 18.10.1978. The inquiry has not been further proceeded. It is not disputed that the applicant who has been charged with irregularities involved

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allegations of fraud has not been prosecuted criminally.

The respondents alleged that the applicant was a part of a conspiracy and it is necessary to place the petitioner under suspension and keep him away from access of important records in the interest of protecting the official documents. In the public interest, the applicant is undesirable for the Govt. services. The petitioner on the other hand contests about the very nature of the charges showing details with reference to records and that at this length of time, it is unfair that the petitioner should be called upon to answer such charges. He further stated that inspite of his application, he has not been furnished with a copy of the documents and the inquiry has not been proceeded with. It is held that such orders either of suspension or inquiry are bad in law and should be set aside. He has cited the judgment (1) 1987 (4) S.L.R. pg. 193 C.A.T. (Mad.) and (2) 1977 A.I.R. S.C. 211, 8 Orissa High Court in support of his contentions.

2. After hearing the learned advocates and perusing of the record, we find that the petitioner has chosen to file a case only on 5.2.1987 to this Tribunal. The petitioner has therefore not ~~exactly~~ taken timely steps against his grievance. Learned advocate for the respondents Mr. Ajmera has raised the question of limitation regarding his plea that the subsistence allowance should be increased may be barred. Rule F.R. 53(1) requires the Government to increase subsistence allowance after a period of one year even if the petitioner has not applied, if the petitioner is not responsible for delay.

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In this case, the charges themselves have been framed 3 years after the order of suspension and whatever may be the plea regarding delay thereafter, it has not been delayed on the part of the petitioner after one year of the charges being communicated to the petitioner. The Rule requires increase in the amount of subsistence allowance from 50% to maximum of 75% after a period of one year and does not require the petitioner to apply for it. The respondents have to apply their mind for increasing the amount as required under Rule 53 (1). Mr. Ajmera, learned advocate for the respondents stated that it is likely that the petitioner is not governed by F.R. Rules but could not produce the Rules under P & T Manual which governs the petitioner. Accordingly, we have sought to rely upon F.R. Rules which govern Central Government Servants and on that basis, we direct that the petitioner be allowed subsistence allowance with effect from 26.7.1976 to the extent of 75% of pay within a period of one month. The petitioner pleaded that in view of the delay and of nature of the charges to establish the case and the documents relied upon by the respondents inquiry should be quashed and set aside. Having regard to the nature of inquiry, the detailed facts and circumstances with reference to the statement of allegations and charges in this case and that charges have been framed and the Inquiry Officer has been appointed, we do not see any reason to conclude that the inquiry should be quashed and set aside at this stage. ^{upon} ~~With~~ We are of the opinion that the inquiry should be proceeded with and should be brought to a conclusion speedily. Learned advocate for the respondents states that this should be completed within a period of 4 months if they get co-operation from applicant. Having regard to

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the nature of the charges, we consider that a maximum period of 6 months should be given for completing the inquiry.

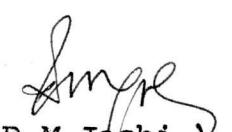
We do not see any justification for keeping the applicant under suspension. The plea that the applicant may interfere with the inquiry or temper with the documents or otherwise would be undesirable as a Government Servant, has not satisfied us as the documents are already under the control of respondents and it is possible for them to keep them in safe custody. The applicant can be assigned tasks in which he is not likely to interfere with the inquiry or temper with the documents. We, therefore, are of the view that the applicant be reinstated forthwith.

In the result, we find that the application has merit and partly allow it with the directions :

- (1) that the petitioner be reinstated forthwith;
- (2) that the petitioner be paid subsistence allowance to the extent of 75% of pay with effect from 26.7.1976 within a period of one month;
- (3) that the respondent complete the inquiry within a period of 6 months.

With these directions, we quash and set aside the order of suspension impugned in this case. There shall be no order as to costs.


(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

*Mogera