

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~

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O.A. No. 655 Of 1988
~~XXXXXX~~

DATE OF DECISION 18/12/89

Mr. R. S. Gupta Petitioner

Mr. K. K. Shah Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. B. R. Kyada Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. J. N. Murthy : Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH,
AT AHMEDABAD.

O.A.No. 655 of 1988.

Date of decision: 18th December, 1989

Between:

R.S.Gupta. Applicant.

Vs.

Union of India and others, Respondents.

Shri K.K.Shah, Counsel for the Applicant.

Shri B.R.Kyada, Counsel for the respondents.

CORAM:

Hon'ble Shri P.H.Trivedi, Vice-Chairman.

Hon'ble Sri J.Narasimhamurty, Member (Judicial).

Judgment of the Bench pronounced by
Hon'ble Shri J.Narasimhamurty,
Member (Judicial.)

-:-

The Applicant filed this Application seeking
a direction to the respondents to pay the subsistence
allowance to him from June, 1966 and revoke the
suspension order with consequential benefits.

The averments in the Application briefly
stated are thus:

The applicant was selected by the Railway

Service Commission, Bombay for the post of Apprentice Fireman in the Western Railway. After undergoing the requisite apprenticeship for the post of Fireman Gr.'A', he was posted as Fireman Gr.'A' at Rajkot in Rajkot Division of the Western Railway in the year, 1959 at Sabarmathi Station. He was promoted from the post of Fireman Gr.A to the Post of Shunter and from the post of Shunter to the post of Driver Grade 'C' in the year, 1960. The applicant states that the posts of Fireman Gr.'A', Shunter and Gr.'C' Driver are classified as 'Running Staff' for all purposes. That the Running Staff are under the Administrative Control of the Divisional Mechanical Engineer of that particular Railway Division and the applicant was under the control of the Divisional Mechanical Engineer of Rajkot Division of the Western Railway. The Divisional Mechanical Engineer is also the Disciplinary Authority under the Railway Servants Discipline and Appeal Rules.

The applicant was placed under suspension by a letter issued by the Loco Foreman dated 3-2-1966. The applicant was put under suspension by Order No.E-208/sus/R/225/66 dated 18-3-1966 of the Divisional Mechanical Engineer of Rajkot Division. He was paid subsistence allowance from February, 1966 to May, 1966 and thereafter the subsistence allowance was stopped by Respondent No.2.

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The applicant states that regular recoveries were being made from his salary towards rent for the occupation of Railway Quarter No.11-A, New Loco Colony at Rajkot.

The applicant states that he represented to the authorities for payment of subsistence allowance but to no avail. The applicant further states that after breaking open of the doors of the quarters, the Quarter under his occupation was taken possession by the respondents and the articles in the quarter were removed. Hence the application.

The respondents have not filed their counter.

We have heard Shri K.K.Shah learned counsel for the applicant and Sri B.R.Kyada, learned counsel for the Respondents.

The learned counsel for the applicant mainly urges that the applicant was not paid subsistence allowance from June, 1966 onwards and he is entitled for the same.

The learned counsel for the respondents contends that the question of payment of subsistence allowance do not arise in this case because an enquiry was conducted and that the applicant participated in the enquiry and that the applicant was found guilty of the charges by the Disciplinary Authority

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and he was removed from service. Thereupon the applicant carried the matter in appeal and the Appellate Authority confirmed the order of the Disciplinary Authority. The applicant is not in service of the respondents since long time and therefore, the question of paying subsistence allowance do not arise. As he was removed from service, the question of revocation of the suspension order also does not arise.

In support of the contention that the applicant is entitled for subsistence allowance, the learned counsel for the applicant relied on a decision reported in P.L.SHAH V. UNION OF INDIA AND ANOTHER (1) wherein Their Lordships of the Supreme Court observed as under:

"The cause of action in respect of such a prayer as made in the application arises every month in which subsistence allowance at the reduced rate is paid. Therefore, even though no relief could be given to the appellant in respect of the period which was beyond three years from the date on which the Tribunal commenced to exercise its powers under the Act, it was quite open to the Tribunal to

(1)1989 SCC(L & S)223.

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to consider whether it was proper for the Government to continue to give effect to the order dated May 6, 1982 from any subsequent date and if the Tribunal came to the conclusion that the order dated May 6, 1982 was required to be revised it could pass an appropriate order notwithstanding the fact that a period of five years had elapsed from the date on which the order reducing the subsistence allowance was passed. While doing so it was open to the Tribunal to fix a date within the period of the said three years from which the appellant should be paid the subsistence allowance at the revised rate, of course, having due regard to the date of application also. In the alternative, the Tribunal could have asked the authority concerned to review the order."

In P.L.Sha's case, the Supreme Court was dealing with a case where there is reduction of subsistence allowance but not altogether stoppage of the subsistence allowance. In that case the petitioner was getting the subsistence allowance but at a reduced rate. Therefore, as held by the Supreme Court the cause of action in respect of such a prayer arises every month in which the subsistence allowance at the reduced rate is paid. But in this instant case, as admitted by the applicant, the subsistence ^{allowance} _x was altogether stopped from June, 1966. There is no continuity of payment of subsistence allowance in this case.

The decision relied on by the learned counsel for the applicant will not be helpful to the case of the applicant as it is totally difference from the facts of the case on hand.

In this case the applicant was paid subsistence allowance from February, 1966 to May, 1966. Thereafter as admitted by him he was not paid at all any subsistence allowance and the applicant was silent all these days and has come forward with this application in the year, 1988 after a lapse of many years. The principle enunciated by the Supreme Court that ~~the~~ cause of action in respect of payment of subsistence allowance arises every month in which the subsistence allowance at the reduced rate is paid, will not be applicable in this case because there is no continuity of payment of subsistence allowance. The application is time-barred.

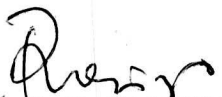
Moreover, the learned counsel for the respondents stated that Departmental Enquiry was conducted against the applicant, that the Disciplinary Authority found the applicant guilty of the charges and the Appellate authority confirmed the decision of the Disciplinary Authority on appeal by the Applicant. Therefore, he urges that the question of revocation of


suspension order does not arise.

The long silence by the applicant to file the petition ~~by the~~ shows that the applicant has no interest in the matter. He came forward with this application to take a chance in order to get some benefit.

On the facts and in the circumstances, we are of the view that the Application is time-barred. There are no merits in the application.

In the result, the application is dismissed. There will be no order as to costs.


(P.H. TRIVEDI)
Vice-Chairman.


(J. NARASIMHAMURTY)
Member(Judicial)

Date: 18th December, 1989

SSS.