

No
Subsistence Allowance

(13)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.No. 27 OF 1990.
in
O.A. No. 173 OF 1989.
~~TAX No.~~

DATE OF DECISION 21.8.1991.

Mr. P.L. Shah, Petitioner

Mr. I.S. Suphia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.S. Nair, Vice Chairman,

The Hon'ble Mr. M.M. Singh, Admn. 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?

No

(14)

Mr. P.L. Shah,
1710/5, New Vadvalipole,
Shahpur,
AHMEDABAD -1.

: APPLICANT

(Advocate: Mr. I.S. Supehia)

VS.

1. Union of India.

2. Regional Provident Fund, Commissioner,
Gujarat State,
Near Gandhi Bridge,
AHMEDABAD?

: RESPONDENTS

(Advocate: Mr. P.M. Raval)

CORAM : Hon'ble Mr. G.S. Nair

: Vice Chairman

Hon'ble Mr. M.M. Singh

: Member (A)

O R A L - O R D E R

R.A./27/90

IN

O.A./173/89

Date : 21.8.1991

Per : Hon'ble Mr. G.S. Nair

: Vice Chairman

Heard advocate Mr. I.S. Supehia on behalf of the petitioner and advocate Mr. E.A. Samuel for Mr. P.M. Raval on behalf of respondents in the Review Petition, ^{who} and have taken notice of the petition and have appeared through counsel.

2. ^{filed by the applicant in the O.A.} The main ground urged in the Review Petition, is that even according to the findings in the judgement the petitioner should have been allowed enhanced subsistence allowance from February 1987. It was pointed out by counsel of the petitioner that in para 9 of the judgement the claim has been allowed only from February 1988. This submission has force. Obviously

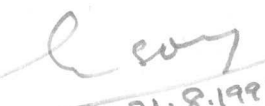
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it was by ^atypographical error that instead of February 1987 it was mentioned as February 1988 in para 9 of the judgement. This being ^athe patent slip, requires correction, ~~xx~~ and it was not, in all fairness opposed by counsel for the respondents

3. At the time of hearing, placing reliance on the judgement of the Supreme Court while remitting this case, it was submitted by counsel of the petitioner that really the petitioner should have been allowed enhanced subsistence allowance from ^{an}earlier date and that there cannot be any bar of limitation in respect of the same. However, we are not in a position to accept the submission. This matter was actually considered by us and it was thereafter that the direction was given that the petitioner can be allowed enhanced subsistence allowance commencing from the period of one year prior to filing of the Original Application.

4. In the result the Review Petition is disposed of with the direction that the final order dated 22.3.1990 shall stand modified to the extent that claim for enhanced subsistence allowance can be sustained ~~only~~ from the month of February 1987. ~~In~~ Para 11 of the final order shall also stand modified in so far as instead of February 1988 onwards it will be read as from February 1987 onwards. It is also made clear that the earlier direction given in para 11 with respect to the period for payment of arrears, so far as it relates to the arrears that ^{is to} be paid ^{in view of this order,} will be the period of two months from the date of receipt of copy of this order.

M. M. Sumer
(M.M. SINGH)
Member (A) 2/8/91


21.8.1991
(G.S. NAIR)
Vice Chairman


M.A./3/90
in
O.A./173/89

(16)

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

15/01/1990

Heard Mr. I.S. Supehia and Mr. J.S. Yadav
for Mr. J.D. Ajmera, learned advocates for the
applicant and respondents respectively. The case
O.A./173/89 be posted for hearing before the division
bench as soon as it is available. With this order,
M.A./3/90 stands disposed of.


(P H Trivedi)
Vice Chairman

*Mogera

MA/201/89

MA/200/89

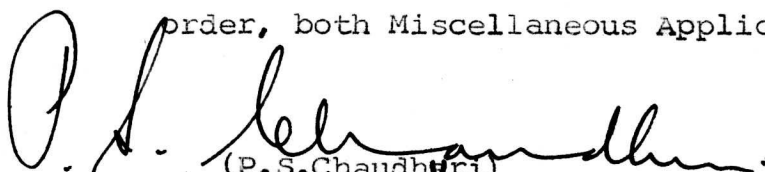
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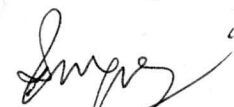
OA/Stamp No.83/88

Coram : Hon'ble Mr. P.M. Joshi : Judicial Member
Hon'ble Mr. P.S. Chaudhuri : Administrative Member

17/4/1989

The petitioner in this application, by filing MA/200/89, has sought amendment to the petition. By filing another MA/201/89 he has requested the Tribunal to take OA Stamp No.83/88 on record and admit the same in terms of the orders passed by the Supreme Court. The application filed by the petitioner is admitted. Registry is directed to register the application as ~~a fresh~~ and give the number accordingly. The petitioner's requests for amendment is allowed. The petitioner is directed to carry out the amendment within 10 days. Issue notices to the respondents ^{duly amended} to reply to the ~~amended~~ application. The respondents are directed to file the reply within 30 days from the date of the notice and furnish a copy to the other side. Registry to take necessary action. With this order, both Miscellaneous Applications stand disposed of.


(P.S. Chaudhuri)
Administrative Member


(P.M. Joshi)
Judicial Member

Central Administrative Tribunal

Ahmedabad Bench

Inward No. 230

Date 30.01.89

No. 9994/88/SEC. IX

Sup. C.—75

All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name.

Telegraphic address :—
"SUPREMECO"

SUPREME COURT
INDIA

FROM

The Registrar (Judicial),
Supreme Court of India.

TO

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench. *Ahmedabad*

Dated New Delhi, the...20th January...1989.

CIVIL APPEAL NO. 38 OF 1989

(Against the Order dated 15th March, 1988, of the Central Administrative Tribunal, Ahmedabad in Application No. 49 of 1988)

P.L. Shah

... APPELLANT

VERSUS

The Union of India & Ors.

... RESPONDENTS

Sir,

In pursuance of Order XIII, Rule 6, S.C.R. 1966, I am directed by their Lordships of the Supreme Court to transmit herewith a certified copy of the Judgment dated 18th January, 1989, in the Appeal above-mentioned. The certified copy of the Decree made in the aforesaid appeal will be sent later on.

Please acknowledge receipt.

Yours faithfully,

Entered in
Supreme Court
Unit Register no. 4/89.

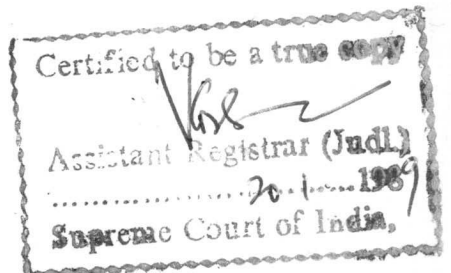
FOR REGISTRAR (JUDL.)

DT Ref (5)
This copy is
forwarded to the
Registrar of the
Central Administrative
Tribunal
30/1/89

30/1/89
P.L. put up
with the copy of
the Tribunal's judgment
DT 2-189
(at p. 5)
AK.
M. P. Bhatnagar
10/Supreme Court/82
4/2/89

19 163757

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION



CIVIL APPEAL NO. 38 OF 1988

P.L. Saah Appellant

versus

Union of India & Anr. Respondents

J U D G M E N T

VENKATARAMIAH, J.

The appellant was working as an Upper Division Clerk in the year 1975. He was placed under suspension by an order dated 25.7.1975 as a result of the institution of a criminal prosecution against him and he continues to remain under suspension to today. By an order dated 4.2.1975 he was sanctioned subsistence allowance at the rate of 50 per cent of salary last drawn. By a further order made on 1982 the subsistence allowance was reduced to 25% of the salary he was drawing on the date of suspension. The increments he would have earned from the date of suspension and

the periodical revisions of pay-scales were not taken into consideration in determining the subsistence allowance.

The charge-sheet was filed in the criminal case against the appellant in 1970 and the case was committed to the sessions, but the committal proceedings were quashed by the High Court in 1979. Then the proceedings again began before the Metropolitan Magistrate in 1979. The case, however, has not yet come to an end.

Aggrieved by the denial of the salary and allowances due to him for a long time on account of the order of suspension and in particular the order fixing the subsistence allowance at 25 per cent of the salary which he was drawing at the time of suspension by the order dated 6.5.1982, the appellant approached in the year 1983 the Central Administrative Tribunal (Ahmedabad Bench) for a direction to be issued to the Government to restore the original Order dated 4.3.1975 by which the subsistence allowance was fixed at 50 per cent of his salary. His petition was dismissed by the Tribunal by its order dated 15.3.1988 on the ground that the appellant approached the Tribunal more than five years after the date on which the Order dated 6.5.1982 had been issued apparently on the ground of limitation.

set out in sub-section (2) of section 21 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'). Aggrieved by the order of the Tribunal, the appellant filed this appeal.

The question for consideration in this appeal by special leave is whether in a case of this nature, the Tribunal was right in holding that the application before it, was barred by time. Sub-section (1) of section 21 of the Act, no doubt, says that a Tribunal shall not admit an application in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made, and in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. Sub-section (2) of section 21, however, provides that notwithstanding anything contained in sub-section (1) of section 21 where the grievance in respect of which an application is made had arisen by reason of any order made at any time during

the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal become exercisable under the Act in respect of the matter to which such order related, and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later. Sub-section (3) of section 21 further confers power on the Tribunal to condone the delay in certain circumstances if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

In the present case the main grievance of the appellant was not that the Order dated 6.5.1982 by which the subsistence allowance payable to him was reduced to 25 per cent was bad at the commencement although there were some allegations to that effect but it was one relating to the failure of the authority or the Government to review the Order dated 6.5.1982 even though a long period of 5 years had elapsed after the reduction of the subsistence allowance. His contention

-: 5 :-

was that the delay in the conclusion of the criminal proceedings as a consequence of which he had been kept under suspension was not due to him and in the circumstances it was not just and proper that he should be paid a subsistence allowance at a reduced rate for an unreasonably long period. In support of his case the appellant relied upon a decision dated 23.6.1937 of the very bench of the Tribunal in Shri Bhupendra Mahashuklal Mehtap Vs. The Union of India & Ors. in T.A. No. 223 of 1936 (S.C.A. No. 3509 of 1932) in which Fundamental Rule 53 which authorised the Government to review an order regarding subsistence allowance arose for consideration. In the said case the Ahmedabad Bench of the Tribunal quashed the Order dated 5.5.1932 passed against the applicant in that case by which the subsistence allowance payable to the said applicant had been reduced.

An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the Government servant concerned. The

subsistence allowance is paid by the Government so that the Government servant against whom an order of suspension is passed on account of the pendency of any disciplinary proceeding or a criminal case instituted against him could maintain himself and his dependants until the departmental proceeding or the criminal case as the case may be comes to an end and appropriate orders are passed against the Government servant by the Government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him. The very nomenclature of the allowance makes it clear that the amount paid to such a Government servant should be sufficient for bare subsistence in this world in which the prices of the necessities of life are increasing every day on account of the conditions of inflation obtaining in the country. It is further to be noted that a Government servant cannot engage himself in any other activity during the period of suspension. The amount of subsistence allowance payable to the Government servant concerned should, therefore, be reviewed from time to time where the proceedings drag on for a long time, even though there may be no express rule insisting on such review. In doing so the authority concerned no doubt has to take into account whether the Government servant is in

-: 7 :-

any way responsible for the undue delay in the disposal of the proceedings initiated against him. If the Government servant is not responsible for such delay or even if he is responsible for such delay to some extent but is not primarily responsible for it, it is for the Government to reconsider whether the order of suspension should be continued or whether the subsistence allowance should be varied to his advantage or not. The decision on the said question no doubt depends upon several factors relevant to the case. In the instant case the appellant was suspended in the year 1975. Now nearly 13 years have elapsed from the date of suspension. He was paid subsistence allowance at the rate of 50 per cent of the salary last drawn by him from 1975 to 1982 and from 1982 he is being paid 25 per cent of the salary last drawn by him. It is not clear from the record before us, since the application made by the applicant was dismissed by the Tribunal at the preliminary stage, whether the appellant was responsible for the inordinate delay in the disposal of the case instituted against him. In the circumstances of the case we are of the view that 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 consider whether it was proper for the Government to continue to give effect to the Order dated 6.5.1982 from any subsequent date and if the Tribunal came to the conclusion that the Order dated 6.5.1982 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 the application also. In the alternative, the Tribunal could have asked the authority concerned to review the order.

In the circumstances, the Tribunal was not right in rejecting the application solely on the ground that the order reducing the subsistence allowance having been passed on 6.5.1982 the Tribunal could not entertain an application for directing the Government to revise the Order dated 6.5.1982 even in respect of any period within three years from the date on which the Tribunal commenced to exercise its powers having due regard to the date of the application also since we feel that the

-: 3 :-

cause of action in respect of such prayer arises every month in which the subsistence allowance at the reduced rate is paid. We therefore set aside the order of the Tribunal and remand the case to it to dispose of the application made by the appellant on merits. We make an order accordingly.

There is no order as to costs.

SM—
.....J.
(E.S. Venkataramiah)

SM—
.....J.
(N.D. Ojha)

New Delhi,
the 18th January, 1989.

24

Sup. C.—75

All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name.
Telegraphic address :—
"SUPREMECO"

Central Administrative Tribunal
Ahmedabad Bench
Inward No. 485
Date 10.02.89

D. No. 9994/88/Sec. IX.

SUPREME COURT
INDIA

FROM
The Registrar (Judicial),
Supreme Court of India,
New Delhi.
To

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench,
AHMEDABAD.

3rd February,
Dated New Delhi, the 1989.

CIVIL APPEAL NO. 38 OF 1989.

P.L. Shah

Appellant

Versus

Union of India & Anr.

Respondents

Sir,

In continuation of this Court's letter of even number dated the 20th January, 1989, I am directed to transmit herewith for necessary action a certified copy of the decree dated the 18th January, 1989 of the Supreme Court in the said appeal.

Please acknowledge receipt.

Yours faithfully,

Vas

Entered at Sr. no. 4 for REGISTRAR (JUDICIAL)
of the Hon'ble Supreme
Court Register.

Respectfully submitted

Hon'ble Supreme Court matter
for information & Perusal Pl.

Copy of order dt. 15th March, 1988
in M.A. no. 49/88 in O.A. stamp
no. 83/88 is submitted herewith.
Dt. 13-2-1989.

Mr. Parmar
Court Officer

(1) Hon'ble V.C.
(2) Hon'ble J.M.
13/2
14/2/89

Submitted
to the Hon'ble
V.C. & J.M.
for perusal.
see
A.A. CD 13/11

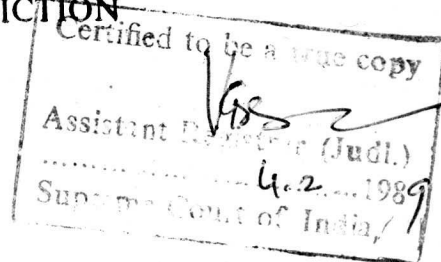
Mr. Parmar
13/2/89

(25)

166388

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL/APPELLATE JURISDICTION



CIVIL APPEAL NO. 38 OF 1989.

(Appeal by Special Leave granted by this Court by its order dated the 2nd January, 1989, in Petition for Special Leave to appeal (Civil) No. 7163 of 1988 from the Order dated the 15th March, 1988, of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in M.A. No. 49/88 in OA/Stamp No. 83 of 1988).

P.L. Shah,
1710/5, Navivadvali Pole,
Shahpur, Ahmedabad-380 001.

Appellant

Versus

1. Union of India,
through the Secretary,
Ministry of Labour,
New Delhi.
2. The Regional Provident Fund
Commissioner,
Near Gandhi Bridge,
Ahmedabad.

Respondents

18th January, 1989.

CORAM:

HON'BLE MR. JUSTICE E.S. VENKATARAMIAH
HON'BLE MR. JUSTICE N.D. GUHA

For the Appellant: M/s. P.H. Parekh and Shishir Sharma, Advocates.

For the Respondents: Mr. B. Dutta, Additional Solicitor General of India,
(Ms. Indu Malhotra and Mr. C.V. Subba Rao, Advocates, with him).

The Appeal above-mentioned being called on for hearing before this Court on the 2nd day of January, 1989, UPON perusing the record and hearing counsel for the parties herein, the Court took time to consider its Judgment and the appeal being called on for Judgment on the 18th day of January, 1989, THIS COURT DOETH in disposing of the

appeal ORDER: (1) THAT the Order dated 15th March, 1988 of the Central Administrative Tribunal, Ahmedabad Bench in M.A. No. 49 of 1988 and O.A./Stamp No. 83 of 1988 be and is hereby set aside and the case be and is hereby remanded to the Central Administrative Tribunal with the direction that the said Tribunal Do restore to its file M.A. No. 49/88 & O.A./Stamp No. 83/88 and Do dispose ~~it~~ of on merits; (2) THAT there shall be no order as to costs of the said appeal in this Court;

AND THIS COURT DOETH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Raghunandan Swarup Pathak, Chief Justice of India at the Supreme Court, New Delhi, dated this the 18th day of January, 1989.

Sub-
(YOGINDER LAL)
ADDITIONAL REGISTRAR
[Signature]

SUPREME COURT

CIVIL/~~CRIMINAL~~/APPELLATE JURISDICTION

CIVIL APPEAL NO. 38 OF 1989.

P.L. Shah

Appellant
Petitioner

Versus

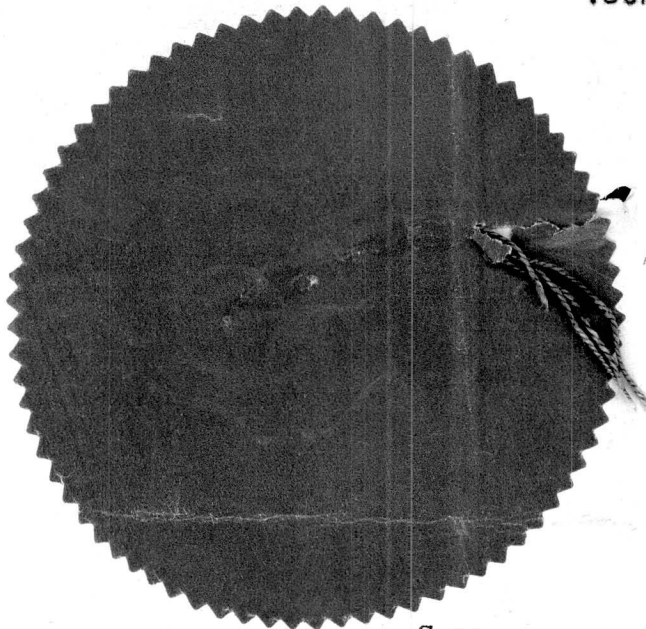
Union of India & Anr.

Respondent ^s

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
O.A./STAMP NO. 83 OF 1988.

DECREE DISPOSING OF THE APPEAL
AND REMANDING THE CASE TO THE
HIGH COURT WITH NO ORDER AS TO
COSTS.

Dated the 18th day of January, 1988.



SHRI

P.H. Barai
Advocate-on-Record for the Appellant.

SHRI

C.V. Subba Rao,
Advocate-on-Record for the Respondents.

SHRI

Advocate-on-Record for

[Signature] 6/2/89

Engrossed by rk/-
Examined by
Compared with
No. of folios

SEALED IN MY PRESENCE