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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO.363 of 1996.

Cuttack this the 15th day of October, 1996.


Akshaya Kumar Parida Applicant.

Versus.

Union of India and others... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not? No
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not? No.


(N. SAHU) 15.10.96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.363 OF 1996.

Cuttack this the 15th day of October, 1996.

C O R A M :

THE HONOURABLE MR. N.SAHU, MEMBER (ADMINISTRATIVE)

Akshaya Kumar Parida, aged about 46 years,
Son of Late Keshab Chandra Parida,
Village/P.O.Silikana, P.S.Aul,
District- Kendrapara,
At present - Senior Auditor,
Office of the Accountant General (Audit-I),
Orissa, Bhubaneswar.

... Applicant

By the Advocate.

: Applicant in person.

Versus.

1. Union of India, represented through
the Accountant General (Audit-I),
Orissa, Bhubaneswar.

2. Deputy Accountant General (Administration),
Office of the Accountant General (Audit-I),
Orissa, Bhubaneswar.

3. Audit Officer, OE-I/Cash,
Office of the Accountant General (Audit-I),
Orissa, Bhubaneswar.

.... Respondents

By the Advocate

: Mr. Ashok Mohanty,
Sr. Standing Counsel.

O R D E R

N. SAHU, MEMBER (ADMINISTRATIVE): Pursuant to the order of this Tribunal
in O.A.No.613 of 1994 dated 9.12.1994 directing the respondents
to review the existing subsistence allowance as per Rule 53(1)(3)
(c) and (d) of CCS(CCA) Rules, the applicant filed a representation
to increase his subsistence allowance. The applicant pleaded that

the meagre subsistence allowance was insufficient for him to maintain his family and also to defend his criminal cases pending in different courts. In this original application the applicant is aggrieved against the order of the Deputy Accountant General (Administration) dated 3.1.1995 (Annexure-5) whereby the applicant was informed that after consideration of his case, the claim for increase in the subsistence allowance was rejected.

2. In the counter affidavit, it is stated that the applicant was arrested twice on 25.8.1993 and 28.2.1994 by the Mancheswar police and three criminal cases were filed under Sections 448, 294, 506, 323 and 336 of the I.P.C.. The respondents assert but the applicant denies that they have not been intimated about the arrests and release on the same day when the arrests were made. Three proceedings were drawn up under Rule 10 of CCS (CCA) Rules and the applicant was suspended on 5.5.1994. There was an allegation by the Director for Scheduled Castes and Scheduled Tribes, Government of India on 12.7.1994 that the applicant was practising untouchability. In another case he surrendered before the S.D.J.M. Court on 14.7.1994. In the first order of suspension, subsistence allowance was granted as per normal rules. The first review of the case was conducted on 8.8.1994. It was recorded vide Annexure-4 that in view of subsequent complaints, there was no need to enhance the subsistence allowance. This order was passed on 8.8.1994. There was a second review on 30.12.1994 and by the impugned order dated 3.1.1995

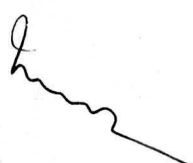
no change in the present subsistence allowance was considered necessary. It is further stated that the applicant was also arrested for the fourth time on 3.5.1995 and forwarded to the S.D.J.M.Court and remanded to the jail custody upto 8.5.1995 and all together 5 cases are pending in the court against the applicant at present. It is also stated that the applicant is an ex-Serviceman and enjoying military pension.

In a rejoinder the applicant alleges that one Kuna Sethi, one of his neighbours had illegally encroached upon a portion of his landed property by demolishing the boundary wall. On his protest, the neighbour's wife, it is alleged, filed fabricated criminal complaints. He denies having ever been a beneficiary of military pension. His arrests are stated to be on account of false and fabricated complaints. It is finally submitted that prolongation of suspension was not attributable to him in any manner. Charge sheets have not been filed so far. It is, therefore, prayed that as the delay is not attributable to him, his claim for increasing subsistence allowance should automatically be considered. The applicant says that there is no other criterion to decide whether subsistence allowance would be increased or reduced.

3. Under the rules, a suspended official is entitled for the first 3 months of suspension to subsistence allowance of an amount equal to leave salary and half pay with appropriate Dearness and Compensatory allowances. The suspending authority has to review

and pass necessary orders sufficiently before expiry of three months. The allowances may be increased to a suitable amount not exceeding 50% of the initial sum if suspension is prolonged due to reasons not directly attributable to the Government servant. It may be decreased if the Government servant is held to be responsible for the prolongation. The reasons for such decision should be recorded. The suspended official may appeal if he is not satisfied with the increase / decrease made in the subsistence allowance and the appellate authority after considering all the circumstances, may pass just and equitable orders under Rules 23(c) & (d) and 27 (iii) of the CCS(CCA) Rules. It is not correct on the part of the applicant to state that he has no right of appeal against the order of review. Now that this O.A. has been admitted and the applicant has not availed the right of appeal and as the period of such appeal has expired long back, I would consider the O.A. on merits.

4. The point to be considered is interpretation of the only ground for variation of suspension, namely, prolongation of the period of suspension is not directly attributable to the Government servant. In fact, the first suspension order was passed on 5.5.1994. The second suspension order was passed on 23.5.1995. The second suspension order was passed on account of the alleged criminal offences registered against him for which he was remanded to jail custody for a period of exceeding 48 hours. It may be true that the respondents




did not finalise the proceedings or even filed charge sheets against the applicant under CCS (CCA) Rules. There is no instance of non-cooperation of the applicant in any manner. Will it not be a proper inference to state that criminal complaints for which the applicant had been remanded to jail custody can be "attributable" to the Government servant? Rightly or wrongly there were repeated criminal complaints one after another - total five in number. He was first arrested on 25.8.1993 in Mancheswar P.S. Case No. 176 under several sections of the I.P.C. On 28.2.1994 in P.S. Case No. 52 he was arrested under Sections 447 and 294 of the I.P.C. Another case was registered against him i.e. P.S. Case No. 84 dated 4.4.1994 under Sections 506 and 509 I.P.C. There was a notice by the Magistrate under Section 107 Cr.P.C. in Misc. Case No. 199 of 1994 and finally the applicant was arrested for the 4th time on 3.5.1995 and forwarded to the S.D.J.M. Court and remanded to jail custody upto 8.5.1995. The last arrest resulted in the second suspension order. The prolongation of suspension was "attributable" to the Government servant since he was the accused for the alleged offences in all these cases. The words, "attributable to a Government servant" are not merely confined to his conduct of co-operation during disciplinary or criminal proceedings.

5. Essentially subsistence allowance is living allowance as a portion of his remuneration

paid to him for the period he is made to remain without any work. No employer wants to pay remuneration for keeping an employee idle. Such a policy is a drain on the public exchequer. The reason for payment of subsistence allowance and not the full remuneration is that if the Government servant stands ultimately terminated from service on account of conviction either in the court or on account of a criminal complaint or by way of disciplinary proceedings, the Government would not be guilty of paying the full amount of salary when the suspended employee is without any work. The second reason for suspension is to keep the employee out of mischief so that he cannot tamper with the evidence or create circumstances which would favour his case in the inquiry. Thus the period of suspension is kept to a minimum so that the Government can make its employee useful in service and take productive work from him as early as possible and the employee also does not have to remain in an uncertain situation either as an accused in a criminal court or as a charge-sheeted employee in a disciplinary proceeding. To keep the suspension period as minimum in duration as possible is in the interest of the Government as well as the employee. Therefore, the only criterion laid down by the Government for varying a subsistence allowance is the consideration whether the prolongation of suspension is attributable to the Government servant. The normal situation we come across is delay in the conduct of the inquiry

either on account of the Government or on account of the employee. If the conclusion of the proceedings is on account of delay attributable to the employee, then either the subsistence allowance is not varied or sometimes reduced; but if the delay is not attributable to the Government servant, the subsistence allowance being very low for carrying on the livelihood in a decent manner, it is considered necessary to increase the subsistence allowance. But the words, "attributable to a Government servant" are wide enough to encompass repeated criminal complaints as in the applicant's case as a result of which he shall have to defend himself in case after case. Even if he is acquitted in 2 to 3 cases, he may be convicted in the 4th or 5th case. This may result in a punishment. The period of trial is prolonged because of the necessity of the applicant's presence in case after case. Thus the successive cases tend to delay the criminal proceedings and tend to delay the period of suspension, as a result of which, the subsistence allowance has to be paid during the prolonged period. Thus this is also a case of prolongation attributable to the Government servant. The merits of the matter are subjudice. The claim of the applicant that these are all trumped up allegations against him is to be decided ultimately by the Courts. After considering all the aspects of the case, I am satisfied that the authorities rightly held that there is no case for



varying the subsistence allowance. The Original Application
is dismissed. No costs.

N. Sahu
(N. SAHU) 15.10.96.
MEMBER (ADMINISTRATIVE) .

DJ/ 15.10.1996.