

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

On Th 16.4.04

for Hearing alongwith
No. 353/2.

Bench

On Th. 29.04.04

copies of order
prepared for counsel
for both sides.

Shri D.P. Dhalasamant
S/o.

Order of 16.4.04

At request, adjourned to
29.4.04 for final hearing.

Vice-Chairman

Member (S)

29.04.2004

Heard the counsel to the Party.
For the reasons to be recorded separately
the order is disposed of alongwith MT 353/02.

Vice-Chairman

Member (S)

Order dated 29.4.2004

Heard Shri D.P.Dhalasamant, learned
counsel for the applicant and Shri A.K.Bose,
learned Senior Standing Counsel on Misc.

Application No. 353/2002 filed by the applicant.

By filing this Misc. Application the
applicant has put forth his grievance that the
appointing authority, viz., the Superintendent
of Post Offices, Sambalpur Division, by his
order dated 4.12.2001 has revised and enhanced
by another five percent of the amount of
initial subsistence allowance equal to leave
salary on half average of pay with effect
from 07.05.2001 and the D.A. admissible on
such enhancement. It is the submission of the
learned counsel for the applicant that the
said authority, i.e., Res. No. 3, has issued no
other order than the above enhancing the
subsistence allowance nor has he taken into
account the entire matter in its proper

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perspective and he has, therefore, prayed that this Tribunal should issue direction to Res. No. 3 to increase the subsistence allowance with effect from 7.5.2001 by 50% as admissible during the period of the first three months.

The learned counsel for the applicant has also alleged that the inquiry has not yet been concluded and by this the applicant has been subjected to serious financial constraints which is attributable to arbitrary and whimsical action of Res. No. 3. He has, therefore, prayed for direction to be issued to Respondents to complete the inquiry and also to revoke the suspension to enable the applicant to overcome the impicunious condition.

The learned Sr. Standing Counsel submitted that the inquiry into the charges framed against the applicant has attained a satisfactory progress and the inquiry is presently at the stage of examining the witness. With regard to the allegation that the subsistence allowance has not been increased as per rules, Shri Bese wanted some more time to obtain instruction. He also disclosed that the action against the other co-accused viz., Jibin Kumar Behera and Santosh Kumar Ranhida have been completed. He confirmed that the suspension order issued in respect of these two officials had been revoked earlier by Res. No. 3 in consideration of their involvement in the alleged fraudulent withdrawal NSC accounts. While admitting that the disciplinary proceedings in case of the applicant is taking time and there could be several

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reasons as to why the revocation of the suspension order has not been taken into consideration, Shri Bose wanted further time to seek instruction from the Respondents in order to apprise the Tribunal.

We have carefully considered the rival submissions advanced at the Bar and also perused the materials placed on record, including the FIR filed by the Asst. Superintendent of Post Offices (OB), Sambalpur Division. With regard to the grievance of the applicant regarding payment of subsistence allowance to him and the inaction on the part of Res. No. 3, we find lot of force in that. The rules regarding payment of subsistence allowance to a Government servant, who is placed under suspension is laid down in FR 53(2)(a) and (b). In terms of proviso to F.R.53(I) (ii) (a) where the period of suspension of a Govt. servant exceeds three months, the authorities which made the order of suspension shall vary the amount of subsistence allowance for any period subsequent to the period of first three months by increasing the amount of subsistence allowance "by a suitable amount" not exceeding 50% of the subsistence allowance admissible during the period of first three months, and that the period of suspension has been prolonged for reasons not directly attributable to the Government servant.

It appears that Res. No. 3 having regard to his authority that he can increase subsistence allowance upto 50% of the subsistence

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allowance, admissible within the period of first three months by a suitable amount, had increased it by 5% of the amount of initial subsistence allowance. However, in his order dated 4.12.2001 it has not been disclosed as to why the amount was increased only by 5% and not by the higher percentage and ^{why} that he had taken time to enhance the subsistence allowance as permissible under FR 53(I)(ii)(a). Therefore, the allegation of arbitrariness in this matter cannot be ignored. Further, we find that the prolongation of the period of suspension has not been found directly attributable to the Government. It is also not clear whether Res. No. 3 has undertaken further revision of the subsistence allowance on account of prolongation of the disciplinary proceedings which is not attributable to the applicant. We, therefore, direct Respondent No. 3 to undertake fresh exercise for revision of subsistence allowance as available under FR 53(I)(ii)(a) and in our considered view, if delay in completing the disciplinary proceedings in this matter is not attributable to the applicant, he should not be denied the benefit of enhanced subsistence allowance not exceeding 50% of the subsistence allowance admissible during the period of first three months. It is to be borne in mind by the Respondent(s) that suspension is not to be construed as a punishment nor the intention of the Department in placing its employee under suspension for a long period be to cause harrassment or disappointment.

In this connection, we would like to focus our attention to Para-3 of Chapter-II (dealing with suspension matter as contained in Swamys' Compilation of CCS(CCA)Rules wherein the disciplinary authorities have been counselled that "it is, however, imperative that utmost caution and circumspection is to be exercised in passing an order of suspension resulting in grave consequence to the Govt. servant concerned. It is also necessary to note that the power of suspension is to be sparingly exercised and only for valid reasons and not for extraneous consideration". This brings us to the other issue agitated before us by the learned counsel for the applicant going to be that it is now about three years/ever that the applicant has been undergoing the rigour of suspension for ~~not~~ fault of his. In the Chapter-2 of CCS(CCA)Rules (as referred to above) it has been categorically laid down that ~~the~~ suspension is to be resorted to sparingly with utmost care only when a disciplinary proceedings against a Govt. servant is contemplated and/or is pending and the purpose of putting/placing the Govt. servant under suspension is to keep him away from the scene of action or where his continuance in the office will prejudice the ^{during} investigation or/any inquiry tampering of witness/evidence is apprehended and/or where his continuance is likely to seriously suffer discipline in the office in which he is working. It has, however, been laid down

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that while placing an official under suspension, the competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence investigation, if any, in progress. As in this case the preliminary investigation is over and it is by now about three years is over (which means away from the scene of action where the mishap took place) the disciplinary authority may review the need for continuing the suspension of the applicant, keeping in mind the observations made by us above and also the instructions issued by the Government in this regard, as contained in Chapter-II of Swamy's Compilation of CCS(CCA) Rules. We also further direct that the Respondents should take such action as would be necessary to complete the disciplinary proceedings including taking the decision by the disciplinary authority on the report of the inquiry officer, within a period of six months from the date of receipt of this order.

With this, O.A. along with M.A. 353/02 are disposed of.

John
VICE-CHAIRMAN 29/11

Y
MEMBER (JUDICIAL)