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O.A. No. 63 of 2007

Order dated: 19.02.2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

The O.A. has been filed by a Railway servant, who was suspended as per the order dated 26.06.2002 (Annexure-A/1) for registration of criminal case against him and for the reason that the applicant was arrested in connection with the above case. The applicant earlier came before this Tribunal by filing O.A. No. 342/04 claiming enhancement of subsistence allowance. However, by an order dated 27.10.2006, this Tribunal directed the applicant to file a representation and with the further direction to the Respondents to consider such representation and pass orders thereon. In the light of above direction and on filing of Annexure-A/3, representation by the applicant, Sr. Divisional Operations Manager/Khurda, Respondent No.3 has passed an order, produced at Annexure-A/4, rejecting the claim of the applicant. Aggrieved by the above order, present Original Application has been filed to quash the order dated 01/05.01.2007 (Annexure-A/4) and direct the



Respondents to give enhanced subsistence allowance to the applicant.

2. Before considering the present Original Application, it is advantageous to narrate few more facts regarding the matter. The applicant himself filed O.A.No. 941/05 for the same prayer, namely, for enhancement of the subsistence allowance and also for stay of the disciplinary proceedings pending against the applicant. The applicant also filed Misc. Application No. 833/05 in the said O.A. for enhancement of subsistence allowance. Further, it is to be noted that the applicant also filed O.A.No. 417/06 for quashing of disciplinary proceeding. It is also to be noted that as per the order passed in M.A. 833/05 dated 27.10.2006, this Tribunal further directed to file representation before the authorities for enhancement of subsistence allowance. This Tribunal also passed an order in O.A. 417/06 to the effect that the disciplinary proceedings initiated against the applicant may continue but no final order could be passed in the above proceedings.

3. Heard Mr. S.N.Satpathy, Ld. Counsel for the applicant and Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents.

4. The main case set up in this O.A. is that since the applicant was suspended as per Annexure-A/1 order on 26.06.2002, as per the Subsistence Allowance Rule applicable to the Railway Servants read with Fundamental Rules, the applicant is entitled for enhancement of the subsistence allowance. Further, it is contended that continuation of the applicant under suspension is not for his fault. That apart, as per the provisions of Rule 5 of the Railway Servants (Discipline & Appeal) Rules, 1968, the applicant is entitled for enhanced subsistence allowance, which has not been paid to him even after the expiry of six months of the suspension. Further, it is the case of the applicant that in spite of the directions issued by this Tribunal one after another (unheard of such orders being issued without considering the merit), the Respondents are not giving enhanced subsistence allowance to the applicant. In this context, the facts mentioned in the beginning of this order regarding the pendency of the various O.As and Misc. Applications filed by the applicant are irrelevant and on considering this aspect also, the Ld. Counsel for the applicant submits that though the applicant was reinstated in service revoking the suspension order on 13.03.2006, the

authorities have not acted as per the rules regarding the subsistence allowance.

5. To the above contentions, Ld. Counsel appearing for the Respondents, Mr. S.K.Ojha, relying on the counter filed on behalf of the Respondents, submits that since the applicant was arrested on a criminal charge and he was imprisoned for more than 24 hours, the suspension was justified and, that apart, so many criminal cases were registered and investigated by the police under various provisions including Indian Penal Code as well as Section 3 of the Unlawful Possession of the Railway Property Act. Further, Ld. Counsel submits that even after he was bailed out of the Trial Court, the applicant is chargesheeted with some other cases also and he is also facing trial for such cases and, in the light of the pendency of the disciplinary proceedings initiated against the applicant, the claim now to be forwarded by the applicant is not justified. The Ld. Counsel further submits that on the basis of the direction given by this Tribunal in O.A.No. 342/04, the Respondents have passed Annexure-A/4 order, a reasoned order, which contained all the provisions regarding the payment of

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subsistence allowance or enhancement of subsistence allowance and that order is tenable in law.

6. On anxious consideration of the rival contentions and materials placed before this Tribunal, the question to be decided in this O.A. is whether the applicant is justified in approaching this Tribunal by filing this O.A. or not?

7. Admittedly, this is the fourth application including that of an O.A. filed for quashing the disciplinary proceedings initiated against him, in which two orders have already been passed by this Tribunal to consider the claim of the applicant under the relevant rules. Before we proceed further, it is to be noted, as per rule 5 of the Railway Servant (Discipline & Appeal) Rules 1968 read with Rule 53 of the Fundamental Rules, a Railway servant, who is suspended during the pendency of criminal case or a disciplinary proceedings, he is entitled for subsistence allowance. Further, it could be noted that as per the Railway Establishment Code, Vol.II, paragraph 1342 (F.R. 53), subsistence allowance to an amount equal to the leave salary, which the Railway servant could be given during the period of suspension. Further, it is read in sub-clause (ii) of

the above paragraph that the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of first three months. This rule further contemplates that if the suspension has been prolonged, due to reasons to be recorded in writing, the subsistence allowance can be increased or be decreased as the case may be. The relevant provisions of the above paragraph 1342 reads as under:

“1342. (F.R.53) Pay during Suspension-(1) A Railway servant under suspension or deemed to have been placed under suspension by an order of the competent authority shall be entitled to the following payments, namely-

- (a) A subsistence allowance at an amount equal to the leave salary which the Railway servant would have drawn if he had been on leave on half average pay or on half pay and in addition dearness allowance, if admissible, on the basis of such leave salary.

Provided that where the period of suspension exceeds 3 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:

- (i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the subsistence

allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the railway servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the railway servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, decreased amount of subsistence allowance admissible under sub-clause (i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the railway servant was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances."

8. Admittedly, the applicant was arrested on the registration of a criminal case against him and he was imprisoned though subsequently bail was granted to him by Hon'ble Apex Court, namely the Hon'ble High Court, there are further cases being registered and investigated against

the applicant but further the applicant was reinstated on 13.03.2006. A disciplinary proceeding has been already initiated, which is also brought to the notice of this Tribunal in O.A.No. 417/06 and this Court has held, the authorities to continue the disciplinary proceedings with a rider not to pass final order in the matter. In this context, it is also to be noted that proceeding is still pending due to the non-cooperation of the applicant into enquiry, as suggested by the Ld. Counsel for the Respondents.

9. Taking into account all these considerations and the discretion cast on the authorities to increase or decrease the subsistence allowance during the pendency of the suspension, this Tribunal is not inclined to issue any order in favour of the applicant. That apart, it is admitted in the counter affidavit filed on behalf of the Respondents that the applicant was getting 50% of the salary as subsistence allowance for the entire period and thereafter as the applicant is involved in a criminal case, it is not proper for the authority to consider for enhancement of the subsistence allowance to 75% unless they are satisfied that applicant is entitled for such enhancement. This Tribunal is refrained from making any such order in favour of the applicant.

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10. In the light of the discussions made above, this Tribunal finds no ground to interfere with the matter and, accordingly, the O.A. stands dismissed with no order as to costs.

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MEMBER (J)

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