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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.119/2009

Date of decision: 2-3-2010

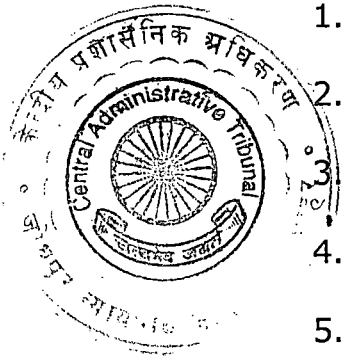
Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Bhola, s/o Shri Chamu, by caste Ahir (Yadav) aged about 52 years, R/o Chak Rami, R.S. Bilpur, Distt. Bhagulpur, Bihar, at present Gangman, Railway Quarter Rangmahal, Rampura, P.S. Pilibanga, Distt. Hanumangarh. (Working under the office of non-applicant No.5- Respondent no. 5)

: Applicant.

Rep. By Mr. Hemant Dutt : Counsel for the applicant.

Versus



1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Bikaner.
3. The Divisional Personnel Officer, North Western Railway, Bikaner.
4. The Assistant Divisional Engineer (First), North Western Railway, Hanumangarh Junction.
5. The Senior Section Engineer (Railway) North Western Railway, Hanumangarh Junction.

Rep. By Mr. Vinay Jain : Counsel for the respondents.

ORDER

Per Mr. Justice S.M. M. Alam, Judicial Member .

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This O.A has been filed by one Bhola, who was working as Gangman in the office of Senior Section Engineer (Railway) North Western Railway, Hanumangarh Junction (respondent No. 5) for grant of following reliefs:

" I) Non applicants (respondents) be directed to make payment of subsistence allowance which 75% of the salary of the applicant from 21.04.2008 onwards till date along with interest @ 10% p.a. and further not to mark absence of the applicant.

II) Any other appropriate order or direction which may be deemed just and proper in the circumstances of the case may be passed.

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2. It appears that this O.A was heard by a Division Bench comprising of Hon'ble Dr. K.B. Suresh, Judicial Member and Hon'ble Mr. V.K. Kapoor, Administrative Member. The order was delivered on 20.10.2009, but both the Hon'ble Members took different views. Hon'ble Judicial Member, while allowing the O.A held that the Railway shall pay within next three months all arrears of subsistence allowance as allowed to the applicant under the rules and will continue to pay the same in accordance with the rules. The view of Hon'ble Administrative Member is that it is not imperative to give desired relief of giving subsistence allowance in a liberal manner especially when the criminal appeal filed by the applicant is still pending before the Hon'ble High Court of Rajasthan at Jodhpur. Concluding line of para 3 of the order of the Hon'ble Administrative Member is as follows:

" Thus it is not obligatory to pay subsistence allowance to the applicant and this should not be construed liberally."

3. Since there was difference of opinion, the matter was referred to the Hon'ble Chairman, Central Administrative Tribunal, Principal Bench, New Delhi and by letter No. PB/13/1/2009-JA dated 07.12.2009, the Hon'ble Chairman has been pleased to nominate me as a third Member under Section 26 of the Administrative Tribunals Act, 1985, to resolve the points of difference and thus the matter came up before me.

4. The following points of difference were referred to resolve:

- "1. Can subsistence allowance be denied to a suspended employee?
2. What is the scope and extent of the term "Presence at Headquarters during suspension" ?



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3. To what extent can the Tribunal or administrative authorities interfere in the jurisdiction of a Criminal Court?
 4. What is the extent of power of a criminal appellate court in the circumstances of this case.?
 5. What is the effect of admission of appeal, granting bails and suspension of sentence and the pendency of criminal first appeal?
 6. Will public interest be served by making a Gangman work and earn his pay then giving him subsistence allowance while he remains in stupefied inertia?
 7. What is the proper order in the circumstances? "

5. Although as many as seven points of difference have been formulated and referred to the third member by Hon'ble Dr. K.B. Suresh, Judicial Member, for decision, I am of the view that only point Nos. 1 and 2 are relevant and the remaining five points formulated by Hon'ble Judicial Member appears to be redundant in view of the fact that the same are not the subject matter of this O.A.

So, I confine myself to answer the questions raised at Sl. No. 1 & 2.



6. The background of the case is that the applicant was prosecuted for an offence under Sec. 376 of IPC read with Sec. 3 (1) (xi) SC/ST (Prevention of Atrocities) Act 1989 on the allegation that he raped a minor girl. In that very case he was convicted by the Trial Court. However, the appeal filed by the applicant is still pending before the Hon'ble High Court. Taking cognizance of the matter, the applicant was placed under suspension by the respondents' department on 03.03.2006 (Annex. A/1). During the suspension period the applicant was paid subsistence allowance as admissible under the rules at the rate of 75% of his salary but from 21.04.2008 and onwards, he was not paid any subsistence allowance by respondent No. 4 on the ground that he was absent from

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headquarters. The applicant filed several representations but of no avail and then he preferred this Original Application.

8. The question to be decided is whether subsistence allowance granted to a government servant under suspension can be stopped. Before making discussion on the points of reference, I would like to incorporate the provision of law with regard to grant of subsistence allowance. Chapter 4 of Swamys" Compilation of CCS(CCA) Rules, 1965, deals with the provisions of grant of subsistence allowance.



A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely :-

- (a) a subsistence allowance at an amount equal to the leave salary which the Government 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:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three

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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 Government servant

- (ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent 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 Government servant.

9. From the rules quoted above, it is apparent that it is mandatory for the authority to grant subsistence allowance to those employees who were placed under suspension due to any reason what so ever. As per provision under clause (ii) a. for the first three months, a suspended employee shall be entitled to get subsistence allowance at the rate equal to the leave salary on half average pay or half pay besides dearness allowance etc. Proviso (i) lays down that if the period of suspension exceeds beyond three months period then the amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of first three months of suspension, meaning thereby that the amount may be increased to 75 % of the salary. Proviso (ii) says that if the suspension period is prolonged due to the reasons directly attributable to suspended government servant, the subsistence allowance can be reduced.

10. Thus from the rules quoted above, it is clear that subsistence allowance granted to a suspended employee can either be enhanced by 75 % of the salary or can be reduced as the circumstances

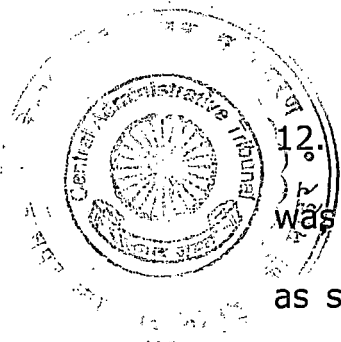


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warrants. But there is no provision or rule which permits stoppage of subsistence allowance.

The point no. 1 which has been referred for adjudication is :- " can subsistence allowance be denied to a suspended employee". In view of the provisions quoted above the answer is that subsistence allowance cannot be denied to a suspended employee on any ground. Thus first point of reference is replied accordingly.

11. Now I would like to take up the second point of reference i.e. " What is the scope and extent of the term "Presence at Headquarters during suspension" ?



12. The contention of the respondents is that since the applicant was not present at the headquarters during the period of suspension, as such his subsistence allowance was stopped. In this regard the learned counsel of the applicant has submitted that it is not mandatory for the suspended employee to always remain present at the headquarters as suspended employee is not required to attend to his work or to mark his daily attendance.. In support of his argument he has referred to Railway Board's letter No. E (D&A)/83 RG6-17 dated 31.05.83, under Rules 4 & 5 of the Railway servants (Discipline and Appeal) Rules, 1968 The relevant portion reads as under: :

Attendance of employee under suspension

A employee under suspension is not required to attend to his work but he cannot leave his headquarters without prior permission of the competent authority. His whereabouts must be fully known to the officer-in charge so that any communication can be made with him if required. There is,

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however, no question of his giving daily attendance and marking presence, and deduction from subsistence allowance cannot be made on this account.

During the period of suspension a direction to the employee to attend office and mark attendance in office daily during working hours is illegal.

13. The above para clearly shows that an employee under suspension is not required to attend to his work and give daily attendance or mark his presence in office. The learned counsel of the applicant has also placed reliance upon the following decisions:

(i) **Jagdamba Prasad Shukla vs. State of UP and others** [(2000) 7 SCC 90.]; (ii) **Yogesh Sharma vs. Rajasthan High Court and ors.** [2003 Western Law Cases (Raj.) UC 704; (iii) **Zonal Manager, Food Corporation of India and others vs. Khaleel ahmed siddiqui** [1982 (2) SLR 779]



14. The decision of the Hon'ble High Court of Andhra Pradesh in **Khaleel Ahmed Siddiqui** (supra) is directly connected with the point in issue in this case. I would like to quote the following lines from para 4 of the said decision, which is relevant in this case.

4..... We fail to understand how when an employee is debarred temporarily from service, he could be compelled to attend office and mark his attendance daily and also be visited with penalty if he does not mark his attendance. The instructions, in our view, cannot be regarded as merely filling up the gaps in the regulations when they are inconsistent with the rules. It is unnecessary to refer to a number of decisions of the Supreme Court which have held that it is not open by way of administrative instructions to amend or modify the statutory rules, though it is open to the executive to supplement or fill up the gaps by administrative instructions. In this connection, it has to be noted that the person under suspension is entitled to all allowances referred to in Reg 66 (6) other than conveyance allowance. This clearly indicates that a person under suspension is not expected to attend office or claim conveyance for his attendance..... These provisions clearly point to the conclusion that suspension by its very nature does not contemplate attendance of the employee at the office and marking his attendance daily....."

The other two decisions are not directly connected with the point in issue. However, the decisions referred to above clearly lays down

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that grant of subsistence allowance to a suspended employee is a matter of right and not a bounty and the same cannot be withheld or stopped on any ground, but it can be enhanced or reduced.

15. Thus relying on the decisions referred above I am of the view that the authorities are not competent to stop payment of subsistence allowance to a suspended employee on the ground that he remained absent from his office and did not mark his attendance.

The reference of point no.2 is answered accordingly.

16. On the basis of discussions made above, I agree with the views of Hon'ble Dr. K.B. Suresh, Judicial Member insofar as the payment of subsistence allowance is concerned and declare that the applicant is entitled to payment of subsistence allowance. Accordingly, the respondents are directed to make payment of subsistence allowance at the rate of 75% of the salary to the applicant from 21.04.2008 onwards till the date he was in service, as I have been informed that the applicant has already been removed from service. The respondents are directed to make entire payment of subsistence allowance within a period of three months from the date of receipt of a copy of this order. As regards the other points of reference is concerned i.e. point Nos. 3 to 7, I am not giving any finding on these points as the same are not related to the relief claimed in this Original Application.

17. Ordered accordingly. No costs.

S.M.M. Alam

[Justice S.M.M. Alam]
Judicial Member.

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Received copy on 4/3/10 by the Counsel for
the applicant Department

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दिनांक [7-12-15] अतः अनुसार
मेरी कार्यवाही 10/2/16
को समाप्त करने के लिए।

कोनई कार्यवाही
जोधपुर न्यायपीठ, जोधपुर