

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 549 of 2009

Thursday, this the 29th day of October, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
 Hon'ble Ms. K. Noorjehan, Administrative Member

P.R. Sasidharan, Sepoy of Central Excise,
 (Under Suspension), Poothara House,
 Kallumada Bhagom, Aymanam. P.O.,
 Kottayam 15.

..... **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. The Commissioner of Central Excise & Customs,
 Central Revenue Buildings, I.S. Press Road, Cochin. 18.
2. The Joint Commissioner (P&V), Office of the Commissioner
 of Central Excise & Customs, Central Revenue Buildings,
 I.S. Press Road, Cochin. 18.
3. The Assistant Commissioner of Central Excise, Kottayam
 Division, Ambakuzhy Arcade, CMS College Road,
 Kottayam 686 001.
4. The Chief Commissioner of Central Excise and Customs,
 Central Revenue Buildings, I.S. Press Road, Cochin. 18.
5. Union of India, represented by its Secretary,
 Department of Revenue, North Block,
 New Delhi 110 001.

..... **Respondents**

(By Advocate – Mr. M.M. Saidu Muhammed, ACGSC)

The application having been heard on 16.10.2009, the Tribunal on
29-10-09 delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The questions of law involved in this case are as under:-

- a) Whether the respondents are right in keeping the applicant under suspension vide order dated 7.10.2008 (Annexure A-7 and Annexure A-11),
- b) Whether the applicant is not entitled to subsistence allowance based on revised pay scales for the period of suspension.

2. Facts of the case

2.1. The applicant joined the service as Sepoy in the respondents' organization in April, 1980 and suspended in July, 1986 as he was involved in a criminal offence and was under custody for a period exceeding 48 hours. Annexure A-1 refers. The criminal case against the applicant was decided by the Trial Court, whereby he was convicted and sentenced to imprisonment. Appeal before the District and Sessions Court, Kottayam was also dismissed. Thereafter, the applicant, vide Annexure A-2 order dated 8.4.2005, was dismissed from service in the wake of the conviction by the Criminal Court. The applicant had filed criminal revision petition before the High Court against the judgment of the District and Sessions Judge and the said revision petition was allowed holding that the applicant was entitled to benefit of doubt, consequent to which, conviction and sentence imposed set aside and the applicant was acquitted. Annexure A-3 refers.

2.2 Pursuant to the Annexure A-3 judgment, the applicant requested for reinstatement in service by due cancellation of order of dismissal (Annexure A-2) vide Annexure A-4 followed by Annexure A-5. It was by Annexure A-8 order dated 10.10.2008 which was preceded by Annexure A-7 order dated 7.10.2008 setting aside the order of dismissal but keeping the applicant under deemed suspension, that the respondents have fixed the subsistence

allowance of the applicant at Rs. 626/- with 376% of dearness pay totaling Rs. 2,980/-. Annexure A-8 and Annexure A-9 refer. Suspension continues vide Annexure A-11. The applicant, being aggrieved by continued suspension and non-payment of subsistence allowance as per the revised pay scale, has approached this Tribunal with the following prayer:-

- "i. To quash Annexure A7 & A11.
- ii. To direct the respondents to re-instate the applicant in service with all consequential benefits.
- iii. To direct the respondents to treat the period of suspension as duty and grant all consequential benefits including promotion and monitory benefits."

2.3 Respondents have contested the OA. According to them the applicant is entitled only to the pay at the then existing pay scale and therefore, he is not entitled to subsistence allowance on the basis of revised pay scale. As regards continued suspension it has been stated that the respondents have conducted review of suspension of the applicant periodically and the review committee has recommended for continued suspension.

2.4 Counsel for the applicant argued that the review has not been conducted as per law and again the applicant has been kept under suspension even without issue of a charge sheet. As regards subsistence allowance the applicant's counsel relies upon a decision by Five Member Bench of this Tribunal (Mumbai Bench) in the case of J.S. Kharad Vs. Union of India & Ors. reported in 2002 (3) ATJ 276. Counsel for the applicant has also filed written arguments, wherein he has referred to the following decisions:-

- a) Dhiraj Kumar Roy Chowdhury (Calcutta) - 1990 (4) SLR 785
- b) Shoorvir Singh Vs. Lt. Governor, Delhi - 1988 (7) ATC 535
- c) N. Prabhakara Moorthy Vs. Tirumala Tirupathi Devasthanam - 1992 (1) SLR 555
- d) Pirappancode Vs. Sreedharan Nair - 1998 (1) KLT SN 76

3. Counsel for the respondents reiterated the stand taken in reply.

4. Arguments were heard and documents perused. Counsel for the respondents promptly made available the records containing the minutes of meeting of the review committee and attendant decisions in respect of disciplinary proceedings of the applicant.

5. As per the provisions of Rule 10(5) of CCS (CCA) Rules, 1965 a review is warranted within 90 days of suspension or deemed suspension followed by subsequent reviews at an interval of 180 days. If such review is not constituted within the stipulated period, the suspension becomes invalid. In the instant case after the acquittal on the basis of benefit of doubt of the applicant, first order was passed on 7.10.2008 whereby the order of dismissal (Annexure A-2) was set aside; it was directed that a further inquiry should be held under the provisions of CCS (CCA) Rules, 1965 against the applicant on the allegations which led to his dismissal from service and the applicant shall be kept under deemed suspension with effect from 8.4.2005 and shall continue to remain under suspension until further orders. The records made available go to show that the first review by the review committee took place on 5.1.2009 whereby the competent authorities recommended extension of deemed suspension by 180 days. This order was

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communicated to the applicant vide order dated 5.1.2009 (though receipt of this order had been denied). The next review committee met on 1.7.2009 and recommended for continued suspension for another 180 days and the said extension of suspension was communicated to the applicant vide Annexure A-11 order dated 2.7.2009. Thus from the perusal of records it is amply clear that the department has taken prompt action within the time scheduled to consider the case of applicant's suspension. Hence, Annexure A-7 or Annexure A-11 cannot be faulted with.

6. As regards the subsistence allowance, the question is whether the revised pay is applicable to the applicant based on which only subsistence allowance should be paid. The initial subsistence allowance of Rs. 626/- plus dearness allowance thereof had been fixed with reference to the pay drawn by the applicant prior to IVth Pay Commission recommendations. After the first suspension there have been three successive revisions of pay. While notifying the revised pay rules, the Government had stipulated that in case of government servant under suspension he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings. This kind of stipulation appears in the CCS Revised Pay Rules, 1997 and thereafter in the latest revised pay rules applicable to the case of the applicant. Similar provision is available in respect of Railway Servants (Revised Pay) Rules also. The said provision in respect of the Railways came for discussion before the Full Bench in J.S. Kharad Vs. Union of India & Ors. (supra). At that time above the stipulation in the case of other

Central Government servants as extracted above also came for discussion vide paragraph 5 of the Full Bench decision. After referring to FR 53 and a number of decided cases the Full Bench had held that the 2nd proviso to Rule 6(a) of the Railway Services (Revised Pay) Rule, 1986 and the provisions in Note 3 to Rule (7) of CCS (Revised Pay) Rules, 1997 would imply that the ratios in the case of Swarnamba - 1988 (2) SLR 541, Khajuria - 1991 (3) SLJ 168 and Mishra 1993 (24) ATC 243 would apply to government servants under suspension at the relevant time.

7. In Swarnamba and other cases it was held that the revised pay scale shall be applicable while working out subsistence allowance.

8. The applicant has also relied upon yet another decision by the Apex Court in the case of Umesh Chand Mishra Vs. Union of India - 1993 Suppl. 2 SCC 210 where the Apex Court directed that the subsistence allowance be paid on the basis of revised scale of salary if any which was prevalent and due to the appellant during the relevant period. In the case of R.P. Kapoor Vs. UOI - 1999 (8) SCC 110 the Apex Court considered the terms subsistence allowance, emoluments and average emoluments and indicated therein that the appellant therein was paid subsistence allowance at the revised pay scales.

9. All the above decisions would thus go to show that during suspension a Government servant shall be entitled to subsistence allowance on the basis of the scale of pay applicable to the post held by him. As such in the instant

case also the applicant should be declared as entitled to subsistence allowance at the rate already fixed by the respondents and the said rate should be applied to the applicant's pay in the revised pay scale.

10. In view of the above, while the relief of quashing of orders at Annexure A-7 and Annexure A-11 is rejected it is declared that the applicant is entitled to subsistence allowance at the rate (in terms of percentage) already fixed by the respondents calculating the amount on the basis of the pay which applicant would have been placed in under the revised pay scales. It is however, made clear that the applicant is entitled to such subsistence allowance from the date of filing of the OA namely August, 2009 and not earlier.

11. Before parting with this case, we would earnestly hope that the respondents take further prompt action in respect of disciplinary proceedings if any proposed by them as the applicant is being paid subsistence allowance without rendering any service which will be heavy burden upon the exchequer/public money. The records perused by us indicate though the case was not accorded that priority which the disciplinary proceedings, especially involving suspension and payment of subsistence allowance deserved, as per the instructions of the DOP&T.

12. OA is disposed of in the above terms. No costs.


 (K. NOORJEHAN)
 ADMINISTRATIVE MEMBER
 "SA"


 (K.B.S. RAJAN)
 JUDICIAL MEMBER