

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 59/2006

TUESDAY, THIS THE 6th DAY OF JUNE, 2006

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**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Dr. V. R. Sanal Kumar
S/o V.M. Raghavapanicker
Scientist Engineer, Propulsion Group
VSSC, Trivandrum
Permanent address -Valsalyam,
Ayroor North PO, Thiruvalla.

..Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

- 1 Union of India represented by the
Secretary to the Government
Department of Space
Bangalore.
- 2 Chairman,
Indian Space Research Organisation
Bangalore
- 3 Director
Vikram Sarabhai Space Centre
Trivandrum.

..Respondents.

By Advocate Mr.TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant a Scientist Engineer under the respondents was doing research work for the Award of Korea Science Engineering Foundation (KOSEF) Post Doctoral Fellowship-2003 as permitted by the Indian NH Science Academy, the competent authority of the Government of India. He was issued with a memo of charges

bearing No. 4/2/3/2003-V dated 19.12.2003 issued in the name of the President raising an allegation that he had been unauthorisedly absenting from duty with effect from 1.9.2003 and that he had left the country without obtaining prior permission of the competent authority. The applicant denied the allegation and the Departmental enquiry was in progress. While so, he was placed under suspension by order dated 13.7.2004 Annexure A1 and continued under suspension vide impugned orders A-3, A-4 and A-9. So far he has not been paid subsistence allowance. His appeal has also not been disposed off.

2 Briefly the sequence of events that led to the suspension of the applicant and related matters is as follows. The applicant was working as a Scientist Engineer under the respondents and he requested for sanction of deputation and for eligible leave for a period of one year for carrying out Post Doctoral Research work in High Performance Rockets at the National University, Andong, South Korea which was not agreed to by the respondents. The applicant submits that he proceeded to South Korea thinking that permission would be granted, ^{and he} ^{then} informed that he had reached South Korea to carry on his post doctoral research work and published a technical paper in the 39th AIAA Joint Propulsion Conference USA during July, 2003. Disciplinary action was initiated against him for unauthorised absence. In the meanwhile the applicant again represented for grant of eligible leave to carry on his research which was also not agreed to, ^{and} ~~disciplinary proceedings had been initiated~~

against him. The applicant again left the country and the leave application was considered and rejected. Considering the sensitive work handled by the applicant in the VSSC he was asked to surrender his personal Passport and action ^{was taken} to inform the Passport Office. The applicant then approached this Tribunal in O.A.

529/2004 praying for a declaration that he is eligible to be sanctioned the eligible leave due to him and immediately after the OA was filed the applicant was placed under suspension by order dated 13.7.2004 (Annexure A1). No reasons were stated in the order. Thereafter by order dated 26.7.2004 it was directed that the applicant would be paid subsistence allowance (Annexure A-8). By Annexure A-3 and A-4 orders the suspension was extended as recommended by the Review Committee from time to time. The applicant submitted an appeal dated 24.8.05 praying for revocation of suspension (Annexure A-8) which is still not disposed of. The applicant is not being paid any subsistence allowance even though he had given 'Non-Employment Certificate' as required under the rules as Annexure A-4. He also reported back at his Headquarters at Trivandrum 18.12.2005, however, he had not been allowed to join office. The applicant has assailed Annexure A1 order and subsequent extension orders as being not in accordance with the amendment to Rule 10 of CCS CCA Rules, 1965 as furnished in Govt. of India Notification No. 9312/03 dated 23.12.2003 marked as Annexure A-12. The 90 days period during which his suspension should have been reviewed by the competent authority had expired on 10.10.2004 whereas the

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order of extension issued by the respondents is dated 15.10.2004..


The applicant is entitled to subsistence allowance for the entire period of suspension and the denial of suspension allowance on the ground that he has not reported to the Headquarters is totally contrary to law and violative of Articles 14 and 16 of the Constitution of India.

3 The respondents have contended that a government servant is entitled to subsistence allowance only when he remains in the Headquarters or changes the Headquarters with permission and admittedly the applicant had not remained in Trivandrum and had taken up assignment in South Korea. Even after his return he was staying at Ayroor, Trivuvalla in Pathanamthitta District. The applicant had left the country without the permission of the competent authority and worked in a foreign country and disciplinary proceedings which were initiated through charge memo dated 19.3.2003 for unauthorised absence and presenting a technical paper without obtaining prior permission was pending against him. He had submitted a 'Non-employment Certificate' for the period from 13.7.2004 to 16.8.2005 and he had been claiming subsistence allowance through fax messages. Letter sent to him at the Trivandrum address was returned undelivered whereas he acknowledged letters sent to Ayroor, Thiruvalla. It was therefore clear that he did not stay at Trivandrum. As per OM NO. 39/5/556-Estt.(A) dated 8.9.1956, the Ministry of Home Affairs, Government of India an officer under suspension is regarded as subject to all other

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conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As he was engaged in Andong National University, Korea, he should have received some remuneration during the period of suspension and as such he has to furnish a certificate regarding remuneration received there. In the above circumstances he was not entitled to get the subsistence allowance. As per the rules the respondents have further submitted that they are prepared to pay the subsistence allowance when the applicant complies with the provisions of the Rule. The respondents again reiterated the same argument in their additional reply statement and that the interim order given by this Tribunal on 7.2.2006 to pay subsistence allowance has been obtained by the applicant without disclosing the entire facts.

4 In the rejoinder, the applicant denied the averments and contentions raised in the reply statement as factually incorrect. It is submitted that the applicant was only engaged in research work in south Korea and had not taken any assignment as alleged by the respondents and that the respondents themselves were aware that when the suspension order was issued that the applicant was living in South Korea. While in Korea he was living out of his own savings and income and denied that he had received any allowances from foreign university and such a contention was not based on any material. In Annexure A-7 letter it was mentioned that if the applicant returned back to office he would be paid subsistence allowance. He returned to India and attempted to report for duty and



from 16.8.2005 he has been staying in Trivandrum. The OM dated 8.9.1956 quoted by the respondents has not stipulated anywhere that the Government servant was entitled to subsistence allowance only when he remains in the Headquarters as claimed by the respondents.

5 A second additional reply statement has been filed by the respondents claiming that both the orders of subsistence allowance as well as denial of subsistence allowance are valid orders. They stated that the non employment certificate furnished by the applicant is false. It has been admitted that the applicant came to know from office on 29.7.2005 and 3.8.2005 that he could not be allowed to join duty as he was continued under suspension. The additional DGP (Intelligence) SBCID had informed the respondents that the applicant was deported from South Korea and reached India on 16.12.2005 and that he is now residing at Ayroor North PO, Thiruvalla, Pathanamathitta District. The disciplinary enquiry against the applicant is being completed and the enquiry report was sent tot he applicant for his final representation. He has not yet submitted his final representation and the delay in the conclusion of the enquiry is attributable to the applicant and continuation of the applicant in service by revoking his suspension before the conclusion of the disciplinary proceedings is likely to subvert discipline in the office.

6 We have heard learned counsel on both sides. The learned counsel for the applicant argued that the extension of suspension after review was not valid as the new Rule 7 introduced in the CCS

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(CC&A) Rules, at Annexure A-12 provides that an order of suspension must be reviewed before expiry of 90 days and in this case the suspension order has been issued on 13.7.2004. Ninety days time expired on 10.10.2004 whereas the order extending suspension has been issued on 14.10.2004. Hence the order has no validity in the face of law. Secondly regarding the entitlement of subsistence allowance, remaining at the Headquarters has no significance in the payment of subsistence allowance to the employee. He relied on the following decisions of the Hon'ble Supreme Court laying down the law on the issue of subsistence allowance that it is a right and denial of the same is inhuman.

(i) Anwarun Nisha Khatoon Vs. State of Bihar & Others
(AIR 2002 SC 2959)

(ii) Jagdamba Prasad Shukla Vs. State Of UP and others (AIR 2002 SC 825)

(iii) Ram Lakhan & Others Vs. Presiding Officer & Others (2000 SCC (L&S) 422)

(iv) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999 SCC (L&S) 810)

(v) O.P. Gupta Vs. Union of India (1987 SCC (L&S) 400)

7 The SCGSC appeared on behalf of the respondents and argued that the applicant had left the country without prior permission of the competent authority and that he was holding a sensitive post in the respondents' organisation and is guilty of gross violation of the rules and in fact interacted with a foreign agency without clearance from the competent authority all of which can be considered as grave misconduct and revocation of suspension of the applicant is

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even against the applicant's interest and also reported that the payment of subsistence allowance was made conditional to his stay at the Headquarters as evident from the order of the respondents (Annexure A2) and therefore he cannot be paid the same.

8 The respondents were directed to produce Ministry of Home Affairs OM dated 8.9.1996 relied on by them and also the disciplinary proceedings file which they have produced and was perused by us.

9 The applicant's main prayer is to quash A-3, A-4 and A-9 orders dated 14.10.2004, 13.4.05 and 25.10.2005 to declare that the continuance of suspension is arbitrary and discriminatory and secondly that he is entitled to get the benefit of subsistence allowance as provided under the rules. Annexures A-3, A-4 and A-9 are orders extending his period of suspension from time to time. Rule 10 of the CCS (CC&A) Rules contains the guidelines for issue of order of suspension and its subsequent review. By GSR notification dated 23.12.2003 sub rules 6 and 7 were inserted in Rule 10 which are reproduced below incorporating revised guidelines for review of suspension:

"(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension before expiry of ninety days from the date of order of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) Notwithstanding anything contained in sub-rule 5, an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

10 The applicant has relied on the above sub rule to argue that since the order of suspension was not reviewed before expiry of 90 days as provided in sub rule (6), the order of suspension will automatically become invalid under sub rule (7). The order of suspension in this case has been issued on 13.7.2004 and according to the applicant 90 days time is over on 10.10.2004. According to the respondents three months' time from 13.7.2004 expires on 13.10.2004 and the review was actually conducted on 12.10.2004 though the order is dated 14.10.2004. We have perused the disciplinary file produced by the Department of Space, Government of India. It is seen that the Review of Group-A cases had to be undertaken by the Committee consisting of the Additional Secretary, DOS, Joint Secretary, DOS and Scientific Secretary, ISRO. The Review Committee has considered the case of the applicant for extension of suspension on 12.10.2004 as pointed out by the respondents. It is seen from the noting of the file that the respondents have taken into account three months period as lapsing on 13.10.2004 and therefore they conducted the review on 12.12.2004. The applicant has counted the period in terms of days i.e. 90 days and has come to the conclusion that taking 13.7.2004 the date of order of suspension also in to account the 90 days will expire on 10.10.2004 (July-19 days + August - 31 days + September - 30 days + October -10 days). The wording of the amended rule is 90 days though the wording in the earlier rule was 3 months. The discrepancy has thus arisen due to interpretation of


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the Rule. The instructions regarding the date of effect of suspension in various types of cases are contained in Rule 10(2) of the CCS CC&A Rules and have been explained in Swamy's Compilation of CCS CCA Rules at page 218. It is provided that orders on suspension will normally take effect from the date on which it is made and in a case, where the official to be suspended (a) is stationed at a place other than the headquarters of the competent authority or he is on tour and (b) he is holding charge of stores and/or cash, the order of suspension will not take effect from the date of issue of the orders. In a case of the type (a) above, the orders of suspension will take effect from the date of receipt of orders by the employee or the date of his relief to be specified by the competent authority. Applying these provisions in the case of the applicant, the order of suspension was issued admittedly when he was in South Korea. There is no averment by the applicant or by the respondents as to the date of receipt of the order by the applicant. Evidently, according to the above instructions as the officer is at a place other than the Headquarters, the order of suspension will take effect only from the date of receipt of the order by the delinquent employee. We have perused the disciplinary case file to ascertain whether any record is available as to the date of service of the order of suspension on the applicant. Curiously from the File No. 4/2/3/2003-V Vol.I produced before us it is seen that the order of suspension which has been shown as issued as Sl. No. 30 at pages 164 and 165 is missing from the file. Since there are no proper records maintained to

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ascertain the date on which the orders have been served on the applicant it can be presumed that it could have been only on a date subsequent to 13.7.2004. As such the difference of two days between the contentions of the applicant and the respondents would not survive and need not be taken as material. In any case the suspension was reviewed on 12.10.2004. We are therefore of the opinion that Annexure A3 is not liable to be quashed on the ground that the suspension was not reviewed within 90 days.

11 However, on the question of continuation of the suspension it is pointed out by the learned counsel for the applicant that generally the guiding principle for placing Government servants under suspension is when a case is under investigation and when it is felt that the continuance of the Government servant is likely to seriously subvert the discipline or is against public interest, whereas in this case the enquiry had been held and suspension has been imposed after completion of the enquiry and it was curious that the charges against the applicant being for unauthorised absence for which suspension was resorted to which would only further burden the respondents by payment of subsistence allowance and that in all the above counts suspension was totally unwarranted and the action of the respondents was only to wreak vengeance on the applicant for the fact that he had approached this Tribunal. It is a fact that the respondents had suspended the applicant after completion of the enquiry and after lapse of two years since the incident had taken place. We tried to find the reasons if any for this delayed action by




the respondents. It appears from the records viz. In the file at pages 15 to 25 of the file produced before us that the respondents have considered the rule position whether it would be proper to place the applicant under suspension when the disciplinary case had proceeded to an advanced stage. The reason which seems to have weighed with the respondents as recorded in the file is that they had reason to believe that the applicant was in possession of sensitive information which he is likely to pass on to various agencies and the intention was to keep him out of reach from such sensitive documents. We cannot express any further opinion on this aspect as only the respondents would know about the sensitive documents which would have become available to the applicant had he been continuing in the post. In any case, the suspension order has not been challenged in this O.A. However, we are constrained to observe that this contention had not been taken either in the charge memo served on the applicant or in the enquiry and indeed if such a danger was envisaged they should not have dealt with the request of the applicant for pursuing the course in the South Korean University in a routine manner as seen from the file. In fact it is seen that the fellowship was recommended by the National Science Academy and the VSSC had forwarded the application of the applicant. The nature and content of the research work should have been subjected to scrutiny at that time and not as a postmortem after the paper had been accepted and also duly recommended by the appropriate authorities to the Korean university. Though the action

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of the applicant in leaving the country without waiting for Government permission from the competent authority on the earlier request for deputation or the later request for leave cannot be justified on any grounds, it is also the responsibility of the respondents to ensure that such requests are closely scrutinised at the initial stage itself and that if the request has to be rejected that should have been done by furnishing proper reasons. Such instances should not be allowed to occur especially in a premier research organisation such as ISRO as it gets a bad name for the country and on many occasions results in genuine frustration among the young scientists.

12 In the circumstances explained by the respondents and as discussed in para 10 above, we are not inclined to interfere with A-4 and A-9 orders extending the suspension already issued but would direct that before further extension is considered a final view shall be taken on the enquiry which has been pending since 2003. Though the respondents in their second reply statement have submitted that the applicant is yet to respond to the enquiry report it is seen from the file that the enquiry report was sent to the applicant at his Korean address which was acknowledged by him and the acknowledgment card as well as other particulars in the prescribed form and ACRS have been submitted by the VSSC by letter dated 14/5/2005 to the Department of Space and it is still pending. It is further seen also from the letter dated 25.1.05 from the VSSC to the Enquiry Officer that the comments on the points raised by the applicant on the enquiry report had been called for. It is therefore evident that the



decision is pending at the Government of India level. The delay cannot be attributable to the applicant. We would therefore direct the respondents to take a final decision in the disciplinary proceedings against the applicant expeditiously.

13 The second question is relating to payment of subsistence allowance. The respondents have relied on the Ministry of Home Affairs OM dated 8.9.1956 and have tried to argue that the payment of subsistence allowance is conditional to the suspended official staying at the Headquarters. The OM reads as under:

(9)Change of headquarters during suspension:- An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such, the headquarters of a Government servant would normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance, etc. or other complications.

There is nothing in this OM to come to such a conclusion and it only deals with the change of Headquarters during suspension as the Headquarters of an employee under suspension is normally assumed to be his last place of duty. However, the employee can request for a change of headquarters and it is for the competent authority to consider the same. Here the applicant has not questioned the fixing of his Headquarters as Trivandrum nor has he requested for any change. The respondents have on their on stipulated a condition in the order of granting subsistence allowance

that it shall be subject to his residing in Trivandrum. Such a condition is not warranted under the Rules. A Government servant under suspension is entitled to subsistence allowance from the date of suspension under the statutory provisions of FR 53. The condition laid down under FR 53 sub rule (2) only is:

"(2) No payment under sub rule (1) shall be made unless the Government servant furnished a certificate that he is not engaged in any other employment, business, profession or or vocation."

14 The order of the Ministry of Finance OM dated 1963 lays down that subsistence allowance shall not be denied on any ground unless the Government servant is unable to/does not furnish a certificate that he is not engaged in any other employment during the period of suspension. Hence a subsistence allowance which is a statutory obligation cannot be denied on any other ground howsoever the respondents want to do so. It is admitted that the applicant has furnished a certificate that he is not engaged in any other employment or business or profit making. In the additional reply statement the respondents have chosen to put forth certain arguments on the genuineness of the certificate produced by the applicant and the conclusion arrived at by the respondents is essentially based on surmises that the applicant would have received some remuneration from the Korean University during the said period. If the respondents have any such doubts they should have rejected the same. They have also not chosen to reject this certificate or get it verified with the appropriate authorities. The

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respondents can deny the payment of subsistence allowance only if such a certificate is not produced. Imposing other extraneous conditions like taking up residence at Headquarters etc. is not warranted under the rules. It is open to the respondents to take action against the applicant if they are satisfied that he has not taken up residence at the Headquarters as evidenced by the vigilance report received by them. The applicant may be liable for such action if the averments are true but this cannot be a ground for refusing subsistence allowance. Therefore, denial of subsistence allowance to the applicant is held to be not in accordance with Rules/Instructions. We also take note of the settled law in this regard as reported in the judgments ~~xxxxxx~~ in para 6 above that denial of subsistence allowance on such arbitrary grounds is not valid in law. In fact the subsistence allowance is intended for the subsistence of the charged employee and his family for the period he is without salary and without without any income. The respondents have also been sanctioning the same by the order extending the period of suspension but not making the payment after sanctioning the same cannot be justified in the eye of law. It is a statutory obligation which cannot be by passed by inaction and deliberate delays by the executive. We therefore hold that the applicant is eligible for payment of subsistence allowance from the date of his suspension till it is revoked.

15 In the result, we direct the respondents (i) to make payment of subsistence allowance to the applicant w.e.f. 13.7.2004 forthwith with

all arrears due (ii) to complete the disciplinary proceedings against the applicant, initiated by the charge memo dated 19.12.2003 and pass final orders within a period of three months from the date of receipt of this order. The OA is partly allowed to the extent directed above. No costs.

Dated 6.6.2006.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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