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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 64/2005

Wednesday, this the 9th day of August, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V Vijayan,
Senior Clerk/Personnel Branch,
O/o the Divisional Personnel Officer,
Southern Railway/Palghat.

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Applicant

By Advocate Mr TC Govindaswamy

v.

1. Union of India
represented by the General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.
Chennai-3.

2. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.

3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

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Respondents

By Advocate Mr Thomas Mathew Nellimoottil

The application having been heard on 9.8.2006, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant in this case is aggrieved by the refusal of the respondents to review the order of suspension and to enhance the subsistence allowance.



2. The applicant, while working as senior Clerk was suspended vide A-1 order dated 9.4.2002. Vide A-2 document dated 10.7.2002, he made a representation for enhancement of subsistence allowance to 75% of the pay. Further representations followed (A-3 to A-8). Vide the impugned order (A-9) dated 26.5.2004, he was informed that his request for enhancement of subsistence allowance was considered but it was decided that it was not a fit case for such enhancement. No reasons were disclosed in such denial. According to his information and belief, a judicial proceeding is pending against him before the CBI Court at Coimbatore for certain offences under the Prevention of Corruption Act and this has led to prolongation of the suspension. Aggrieved by such refusal, he has moved this O.A

3. He has claimed the following main reliefs:

- i) To declare that he is entitled to have his subsistence allowance enhanced to 75% with effect from 9.7.2002.
- ii) To direct the respondents to review the order of order of suspension.
- iii) To declare that further continuance of suspension is illegal.

4. His claims are based on the following grounds:

- i) Impugned order is contrary to Rule 1342 of the Indian Railway Establishment Code Vol.II (A-10 and A-11) and various Railway Board Orders.
- ii) He is being discriminated against in the context of the co-accused in the case having been granted enhanced subsistence allowance of 75% of the pay and of his reinstatement after the completion of 90 days.

5. Respondents oppose the application on the ground that the applicant



was suspended based on the communication from the Vigilance Organisation dated 9.4.2002. For the purpose of considering his request for enhancement punishment the matter was examined by the Chief Vigilance Officer. The then Divisional Personnel Officer, Palghat examined his case and decided against enhancement. Later on, it was left to the Department to take an appropriate decision in the light of existing rules. Vide the detailed speaking order (Annexure R-2) passed in the file, a decision was taken not to give such enhancement. This course of action was endorsed by the successor on 19.5.2004 vide R-3.

6. Heard both sides and heard arguments. To facilitate adjudication, three points were raised for clarification from the respondents during the hearing.

- i. Stage of criminal case pending against the applicant.
- ii. Stage of disciplinary case pending against the applicant.
- iii. The speaking order as relating to the applicant contained a ratio that enhancement of subsistence Allowance would violate the principle of 'no work, no pay' but this does not seem applicable to the other co-accused.

~~8.~~ Despite adequate opportunity of time, in fact, more than asked for time being given, the respondents were not forthcoming with any reply. Hence, it was decided to go ahead with the adjudication with available pleadings and records.

7. The first point to be considered is whether the applicant is entitled to receive enhanced subsistence allowance. He has quoted Rule 1342 of the IREC Vol.II dealing with pay during suspension. The same is extracted herebelow:

"1342. (FR 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 3 months as follows:

(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 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 the sub clause s(i) and (ii) above."

8. It is seen from the above that the competency is vested on the authority to vary the amount of subsistence allowance for period subsequent to the period of first three months, which is the case here. Such variation is not to exceed 50% of the subsistence allowance paid during the first three months, viz, 75%. The second condition is that the said authority is of the opinion that the period of suspension has been

prolonged for reasons not directly attributable to the Railway servant and the said authority should record the reasons in writing. The applicant would contend that the expression 'may be increased' in the proviso should be read as 'shall be increased'. A-11 which is a part of the compilations of the rules, again indicates the competency vested on such authorities.

9. The next point to be considered is whether the speaking order referred to by the respondents is sustainable. The operative portion of the speaking order available vide R-2 is reproduced here below:

"Prima facie there has been a case found against him and vigilance has advised that the employee should be kept under suspension. Government railway servant are not expected to be involved in a criminal cases. therefore, it is clear that the suspension of the employee is justified as it will be an embarrassment for the Government to continue him in service, who is involved in a criminal case. No work is being extracted from the employee. Normally the principle of no work no pay should apply in such cases. However, considering the family condition, 50% subsistence allowance is to be granted as per rules and the same is being granted to him. The employee's demand is that 75% subsistence allowance to be paid to him as he is cooperating with the enquiry. Government money cannot be given just like that. Subsistence allowance once paid cannot be recovered at a latter date. Considering that more government money is to be paid without extracting any work and also the fact that the employee is involved in any work and also the fact that the employee is involved in a serious criminal case, the suspension is required to be continued and considering the gravity of the offence though it is only in the preliminary stage. This is not a fit case for enhancement of subsistence allowance."

It is seen that the main points made therein are that the suspension was under the advice of the Vigilance, the principle of 'no work no pay' should apply in this case and while 50% is given as subsistence allowance, giving



75% is not justifiable on grounds that Government money cannot be given just like that and in any case, once it is given, it cannot be recovered later. It is seen that it is more of an opinion than of a legally sustainable ratio. It is seen that vide the reply statement of the respondents themselves, the CVO of the Railways had advised that the matter was reviewed by SP/CBI Chennai and it had been decided to leave it to the department to take decisions as per the existing departmental rules. Hence the supporting element of advice from the vigilance has been practically diluted. More important elements to be considered in this case are the facts produced by the applicant at the time of hearing. During the course of the hearing, the learned counsel for applicant submitted a copy of the charge sheet in the criminal case wherein the applicant is an accused with (i) Shri Dasaradhan (who is referred to in Ground 'C' and Annexure A-7) and (2) Mr.N.Lakshmanan another co-accused. The charge sheet was shown to the learned counsel for the respondents. Learned counsel for applicant represented that both the co-accused had been suspended, but after lapse of 90 days, subsistence allowance was restored to 75 %. Besides, the learned counsel for the applicant further submitted that at least as far as the knowledge of the applicant goes, Shri Dasaradhan had been subsequently re-instated also. In fact, these are the type of information that the respondents were required to produce.

10. As already referred to above, sufficient time, had been given to the respondents to find out about the status of the disciplinary proceedings. Except for asking for more time, no information was forthcoming by way of help from the respondents. Under these circumstances, the averment of the applicants will have to be taken as uncontested. Another important

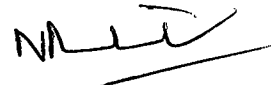


point is that the suspension order was passed as long back as 9.4.2002, more than four years back. It is prejudicial enough for the applicant that no charge sheet has been served on him so far and, worse still, he is given a subsistence allowance of only 50% with no enhancement as per the impugned order.

11. Under these circumstances, it is found to be a clear case of discrimination, meted out to the applicant by treating the co-accused differentially from the applicant. As already pointed out above, the ratio applied in the case of the applicant ought to have been applied with equal force in the case of the other two co-accused which was not done. In view of the discrimination meted out to him, the question of his entitlement for a rise is not being examined.

12. Under these circumstances, in the interest of fairness and justice, the OA is allowed with a direction to the respondents that the subsistence allowance of the applicant be raised to 75 % with effect from 09.07.2002, the arrears consequent to such rise be paid to him within a period of two months from the date of receipt of copy of this order and that, the suspension passed on the applicant shall be terminated forthwith.

Dated, the 9th August, 2006.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER