

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.335/09

Monday this the 1st day of March 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.K.Chandrabose,
S/o.Kunjan K.K.,
Retd. Sub Postmaster,
Parambikulam Post Office.
Residing at Sreesailam, Flat No.F1,
Poonthanam Apartments, Padinjarenada,
Kottakkakam, Tripunithura – 682 301.
Ernakulam District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented
by the Secretary to the Government of India,
Ministry of Communications, (Department of Posts),
New Delhi.
2. The Post Master General,
Northern Region, Kerala Circle,
Calicut – 11.
3. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 6th January 2010 the Tribunal
on 1st March 2010 delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has impugned the Annexure A-1 Memo No.STA/30-
Misc/08 dated Nil April, 2009 issued to him in reply to his Annexure A-4

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representation dated 5.11.2007 and the Annexure A-5 and Annexure A-8 reminders dated 13.2.2008 and 27.5.2008 respectively. The sum and substance of his representations is that he was entitled for 75% of pay and allowances for the period of two spells of his suspension from 9.4.1984 to 27.12.1985 and from 27.6.1986 to 2.6.1993.

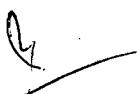
2. The applicant was placed under suspension for the period from 9.1.1984 to 27.12.1985 pending disciplinary proceedings initiated against him. The proceedings culminated in the imposition of a penalty of compulsory retirement made vide memo dated 26.3.1986. He challenged the said order of penalty before this Tribunal vide OA 446/91. Pursuant to the directions of this Tribunal in the said OA he was reinstated in service on 15.1.1992 but again placed under suspension with effect from the same date. The further proceedings initiated against him also culminated in the imposition of the penalty of compulsory retirement with effect from 31.3.1992. On appeal, the penalty was modified to that of reduction of pay to the minimum of the time scale of pay for Postal Assistant for a period of five years by an order dated 27.4.1993. Consequently, he was reinstated in service again with effect from 3.6.1993. He was thus under suspension for two spells ie., from 9.1.1984 to 27.12.1985 and again from 15.1.1992 to 30.3.1992. He was also out of service due to compulsory retirement during the period between 27.3.1986 and 14.1.1992 and between 31.3.1992 and 2.6.1993. The respondents, vide memo dated 26.5.1999, informed the applicant that they have proposed to restrict the amount of pay and allowances payable to him for the periods spent by him under suspension

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from 9.1.1984 to 27.12.1985 and from 15.1.1992 to 30.3.1992 and for the period of non-employment from 27.3.1986 to 14.1.1992 and 31.3.1992 to 2.6.1993 to the amount of subsistence allowance admissible for the period and also not to treat the whole period as a period spent on duty for any purpose. The applicant has submitted a representation dated 18.6.1999 against the aforesaid proposal. The competent authority after having considered the aforesaid representation of the applicant, vide Annexure A-2 order dated 22.7.1999, informed him that he did not deserve any further sympathy in the matter and ordered that the amount of pay and allowances payable to him for the period spent by him under suspension and the period of non-employment as aforesaid be restricted to the amount of subsistence allowance admissible for the period subject to the provisions of sub rule (8) of FR 54. The aforesaid periods were also treated as not spent on duty for any purpose.

3. Aggrieved by the aforesaid Annexure A-2 order of the respondents, the applicant approached this Tribunal vide OA 794/01 but it was dismissed, vide order dated 30.4.2004. However, he challenged the same before the Hon'ble High Court of Kerala vide WPC 37170/04 and it was disposed of by the Annexure A-3 judgment dated 23.10.2007. The High Court set aside the Tribunal's order and declared that the period from 9.1.1984 to 27.12.1985, 27.3.1986 to 14.1.1992, 15.1.1992 to 30.3.1992 and from 31.3.1992 to 2.6.1993 shall be reckoned as service for the purpose of granting pensionary benefits to the applicant. The High Court has also considered the grievance of the applicant that the amount of pay

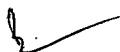


and allowances equivalent to the subsistence allowance admissible and as ordered in terms of Annexure A-2 order dated 22.7.1999 had not been released after adjusting the amounts already received by him by way of pension. The High Court has, therefore, directed the competent authority to look into the above grievance and to redress the same, if the applicant files a representation along with a copy of the judgment. Pursuant to the aforesaid judgment of the High Court, the applicant made the Annexure A-4 representation dated 5.11.2007 in which he submitted that the initial period of suspension was from 9.1.1984 to 27.12.1985 and on completion of three months from 9.1.1984 ie., on and with effect from 9.4.1984 up to 27.12.1985 he was entitled to receive 75% of pay and allowances as subsistence allowance. Since the said period was treated as qualifying for the purpose of pension, his pay, on revocation of suspension on and with effect from 28.12.1985, be fixed duly taking notice of the aforementioned fact. Similarly, he has submitted that as he was placed under deemed suspension with effect from 27.3.1986 and on completion of three months from 27.3.1986 ie., on and with effect from 27.6.1986 he was entitled to grant of 75% of the pay and allowances and that position should continue up to 2.6.1993. He has, therefore, prayed that he be paid arrears of subsistence allowance/quantum of pay and allowances after adjusting the basic pension which he has received in that period. Thereafter, he was paid an amount of Rs.26,440/- without disclosing the details regarding the calculation of arrears of pay and allowances. He has, therefore, made Annexure A-5 representation dated 13.2.2008 requesting the respondents to provide him a copy of the work sheet/calculation sheet indicating how



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the amount of Rs.26,440/- was arrived at. Since no reply was received from the respondents he made Annexure A-6 application under the RTI Act. Thereafter, the applicant received the calculation sheet along with Annexure A-7 letter dated 16.5.2008 from the Central Public Information Officer. From the said calculation sheet, the applicant came to know that the arrears of pay and allowances has not been calculated as per the rules. Therefore, he submitted the Annexure A-8 representation dated 27.5.2008. In the said representation he has submitted that from the calculation sheet he found that the entire period from 27.3.1986 to 14.9.1992 and 15.1.1992 to 31.3.1992 and again from 4/92 to 2.6.1993, the subsistence allowance was calculated only at the rate of 50% of the basic pay and allowances as it stood on 27.3.1986 ie., at the rate of Rs.605/- plus DA on that. He further submitted that in terms of FR 54 (7), the amount determined as pay and allowances in terms of the proviso to sub rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under FR 53. In terms of FR 53 (1) (ii) (a) where the period of suspension exceeds three months, an 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. In that process, 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, 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. He has, therefore, requested to



reconcile and calculate his subsistence allowance. Thereafter, the respondents issued the Annexure A-9 "proceedings of the competent authority under FR 54" dated 25.7.2008 by which the competent authority has modified the Annexure A-7 dated 16.5.2008 and ordered that the period from 9.1.1984 to 27.12.1985, 27.3.1986 to 14.1.1992, 15.1.1992 to 30.3.1992 and 31.3.1992 to 2.6.1993 shall be treated as period spent on duty for pensionary benefits. However, according to the applicant, the respondents have not made any mention about the quantum of pay and allowances payable for the aforesaid period. He has, therefore, sent Annexure A-10 representation dated 12.10.2008 stating that the respondents have failed to take any steps to revise the pension and other retirement benefits like gratuity, leave salary etc. even after certain periods of his absence due to suspension, penalty of compulsory retirement etc. were all regularised and treated as duty. It was followed by the Annexure A-11 representation dated 7.1.2009 stating that the prolongation of the order of suspension was not on account of any reasons attributable to him and, therefore, on completion of three months from 27.3.1986 ie., on and with effect from 27.6.1986 he was entitled to have the quantum of pay and allowances payable to him increased by 50% of the amount which he was entitled to for the first three months. The respondents have finally considered his request vide the impugned Annexure A-1 dated Nil April 2009. As regards the increase in the subsistence allowance by 50%, the competent authority has submitted that the applicant was out of service during the period from 27.3.1986 to 14.1.1992 and from 31.3.1992 to 2.6.1993 and he was reinstated on 15.1.1992 and 3.6.2003 pursuant to the



orders of this Tribunal in OA 446/91 and the Appellate Authority respectively. The competent authority was of the view that the claim of the applicant for increase in the subsistence allowance payable to him for the aforesaid two spells of suspension periods was not sustainable because in terms of clause (c) under Government of India (3) below FR 53 and G.I., Ministry of Finance O.M.No.F.19(4)-E.IV/55 dated 17.6.1958, a suspended officer would continue to draw subsistence allowance at the rate of his leave salary on half pay or half average pay until the competent authority passes an order under FR 53 (1) (ii) (a). However, no review of suspension was carried out in this case, and no such order revising the amount of subsistence allowance was issued. According to them, clause (e) under Government of India order (3) below FR 53 and G.I., Ministry of Finance O.M.No.F.19(4)-E.IV/55 dated 17.6.1958 and O.M.No.1(1)-E-IV(A) 74 dated 31.9.1974 do not permit retrospective revision of subsistence allowance. Further, the decision taken by DPS Calicut in memo dated 22.7.1999 was challenged by the applicant before the High Court but the High Court in its judgment dated 23.10.2007 had not made any observations against the decision with regard to the amount of pay and allowances payable during the period of suspension/out of service. There was also no direction to treat the period as duty for the purpose of pay and allowances. The only direction was to treat the period as qualifying service for the purpose of granting pensionary benefits to the applicant.



4. In the reply statement also the respondents have reiterated their stand taken in Annexure A-1 letter and submitted that eligibility of pay and allowances for the period of suspension/non-employment was already decided in Annexure A-2 memo dated 22.7.1999.

5. We have heard the counsel for the parties. It is seen from the records that the two spells of suspension of the applicant was from 9.1.1984 to 27.12.1985 and from 15.1.1992 to 30.3.1992 respectively. Under FR 53 (1) (ii) (a), the subsistence allowance is restricted to 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. However, under the proviso to the said rule, the competent authority may vary the amount of subsistence allowance for any period subsequent to the period of the first three months. By way of varying the subsistence allowance, the competent authority can increase or reduce the amount of subsistence allowance already been drawn not exceeding 50% depending upon the opinion of the said authority as to whether the prolongation of the suspension period was directly attributable to the Government servant or not. Rule 53 of FR is as under :-

"F.R.53.(1) 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 :-

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;



(ii) in the case of any other Government servant -

(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:

Provided that where the period of suspension exceeds three 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 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 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;

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

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

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

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub rule (3) or sub rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and others allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him."



6. The respondents have already vide Memorandum dated 26.5.1999 proposed to restrict the amount of pay and allowances payable to him for the periods spent by him under suspension from 9.1.1984 to 27.12.1985 and from 15.1.1992 to 30.3.1992 and for the period of non-employment from 27.3.1986 to 14.1.1992 and 31.3.1992 to 2.6.1993 to the amount of subsistence allowance admissible for the period and also not to treat the whole period as a period spent on duty for any purpose. By the said Memorandum, the applicant was also given an opportunity to make such representation as he might wish to make against the aforesaid proposal. The applicant did make the representation on 18.6.1999. After considering his aforesaid representation, the competent authority held that the applicant did not deserve any sympathy in the matter and confirmed its aforesaid proposal vide Annexure A-2 order dated 22.7.1999. The applicant has accepted the aforesaid order of the competent authority and did not make any further claims on account of the enhanced subsistence allowance. It is well within the power of the competent authority to take decision under the aforesaid provisions of the Fundamental Rules. When the competent authority has taken such a conscious decision not to enhance the subsistence allowance, if at all it has to be challenged, it should have been done within a reasonable period. Moreover, the Hon'ble High Court in its Annexure A-3 judgment dated 23.10.2007 in WPC 37170/04 (S) filed by the applicant against the orders of this Tribunal in OA 794/01 considered the aforesaid Annexure A-2 order of the respondents dated 22.7.1999 and observed that the applicant has filed an appeal against the said order but it was dismissed. He also attempted a review



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and the same was also dismissed. Thereafter, he challenged the aforesaid order, its Appellate Order and the Revisionary Order in OA 794/01 before this Tribunal but it was dismissed. The said order was challenged before the Hon'ble High Court in the aforesaid Writ Petition and it was allowed with the following directions :-

"6. The learned counsel for the petitioner raised a grievance that the subsistence allowance ordered to be paid as per Annexure A-7 has not so far been released to him after adjusting the amounts already received by him. The competent authority among the respondents will look into the above grievance of the petitioner if he files a representation along with a copy of this judgment and release the amounts due to him towards subsistence allowance within three months from the date of receipt of a copy of this judgment. The pensionary benefits of the petitioner if already released, shall be revised taking into account the aforementioned declaration made by this Court within four months from the date of receipt of a copy of this judgment.

The Writ Petition is allowed as above."

7. In view of the above position, this OA is dismissed both on merit and on delay. No costs.

(Dated this the 1st day of March 2010)


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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