

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NxEwWxDxExHx
NEW BOMBAY BENCHO.A. No. 416/87
TAX Nox

198

DATE OF DECISION 11.08.1988

Shri M H Mahendra Petitioner

M A Mahalle Advocate for the Petitioner(s)

Versus

Union of India & 2 ors Respondent

Shri J D Desai Advocate for the Respondent(s)
(for Shri M I Sethna)

CORAM :

The Hon'ble Mr. B C Gadgil, Vice Chairman

The Hon'ble Mrs. J.A. Dayanand

1. Whether Reporters of local papers may be allowed to see the Judgement? - 43
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? / 10
4. Whether it needs to be circulated to other Benches of the Tribunal?

2
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A.NO. 416/87

Shri M H Mahendra
Senior Examiner of Trade Marks
201/B Victor Apartments
Bawdi Cross Lane
Marve Road
Malad (West)
Bombay 400064

Applicant

v/s.

1. Union of India
through Secretary
Ministry of Industry
Udyog Bhavan
New Delhi 110001
2. The Director
Ministry of Industry
Vigilance Section
Udyog Bhavan
New Delhi 110001
3. Controller General of
Patents, Designs & Trade Marks,
Old CGO Building
101 Maharshi Karve Road
Bombay 400020

Respondents

Coram: Hon'ble Vice Chairman Shri B C Gadgil
Hon'ble Member(A) Smt. J.A. Dayanand

Appearance:

Shri M A Mahalle
Advocate
for the applicant

Shri J D Desai
(for Shri M I Sethna)
Advocate
for the Respondents

ORAL JUDGMENT
(PER: B C Gadgil, Vice Chairman)

DATED : 11.08.1988

The applicant is a Senior Examiner of Trade Marks working in the Trade Marks Department. The grievance in the application is about the suspension ordered against the applicant dated 19.12.1986 and served on him on 24.12.1986.

Reb

2. As stated above the applicant was put under suspension with effect from 24.12.1987 as a departmental enquiry was contemplated. The charge sheet was framed against the applicant on 20.1.1987 vide page 37. The applicant was asked to submit his reply within 10 days from the receipt of the notice. The applicant had a grievance regarding the supply of copies of documents. However, on 24.2.1987 he filed the reply (vide page 43 of the application) inter alia contending that the copies have not been supplied, but at the same time giving reply to the various charges framed against him. It appears that another notice was sent to the applicant on 30.1.1987 which was received by the applicant on 2.3.1987. By that notice the applicant was again asked to file a reply. The applicant gave a reply on 5.3.1987 (vide page 53) that he has already submitted his statement of defence to the articles of charges on 24.2.1987 as desired by the Inquiry Officer. There was another communication dated 24.3.1987 (vide page 58). The applicant was again asked to file a reply within 10 days from the receipt of that memorandum. The applicant on 2.4.87 gave a reply (vide page 59 of the compilation) that he has already given his reply to the charges on 24.2.1987. The inquiry then proceeded. We are told that the applicant has not given any other reply except the one dated 24.2.1987. During the course of arguments we are also informed that the inquiry has been completed on 3.5.1988 and the further procedure is awaited viz., Inquiry Officers Report, order of the Disciplinary Authority after making a reference to UPSC.

3. In his application the applicant has challenged the suspension order dated 19.12.1986 and has prayed that the said order should be revoked and he should be reinstated immediately. There are also consequential reliefs that the period of suspension till revocation be treated as period spent on duty and that the applicant should be paid all the salary and allowances. In the alternative he has also prayed that the subsistence allowance should be increased to 75% according to the provisions of Rule 53 of Fundamental Rules. During the

Bch

course of the arguments Mr. Mahalle for the applicant stated that he is presssing this alternative relief about the increase in the subsistence allowances.

4. The respondents resisted this claim by contending that the inquiry has been prolonged and this delay was attributable to the applicant. It is for this reason the respondents contend that the matter was reviewed on 21.4.1987 and a decision was taken not to increase the subsistence allowance.

5. It is true that Fundamental Rule 53(1)(ii) provides that the subsistence allowance may be increased to 75% if in the opinion of the authorities the period of suspension has been prolonged by reasons to be recorded in writing not directly attributable to the Government servant. We have already observed that the charges were framed on 20.1.1987 and the applicant has filed a reply on 24.2.1987. It is true in that reply he has made a grievance that he was entitled to receive the copies of documents. It appears that the respondents took such a reply as a sort of provisional reply and fresh notices were sent to the applicant for filing a reply. However, the applicant has made the position clear on 5.3.1987 and 2.4.1987 that he has filed a reply on 24.2.1987. Under these circumstances, it will not be possible for us to accept the contention of the respondents that the suspension of the applicant was prolonged on account of facts attributable to Government servant. The reason for which the Government refused to increase the subsistence allowance after reviewing the case of the applicant does not appear to be correct and consequently that review decision will have to be quashed. Obviously the applicant would be entitled to the increased subsistence allowance as detailed in the final order.

6. Mr. Mahalle made another submission. He states that the enquiry is already over on 3.5.88. He contended that specific directions be given to the respondents for finalising the entire departmental proceedings including the final order within a specified period.

reli

(12)

When we asked Mr. Desai about this submission, he told us after the Inquiry Officers Report the matter will have to go to Union Public Service Commission and then it will be processed by the Central Government for seeking orders of the President. It is true that some time will be required for all this. However, it would be in the fitness of things if we direct that this should be done within a period of $3\frac{1}{2}$ months from to-day i.e., on or before 30.11.1988. Hence we pass the following order.

ORDER

The application partly succeeds.

The subsistence allowance of the applicant stands increased by 50% of the existing substance allowance with effect from 24.3.1987. The increased subsistence allowance should be paid to the applicant within a period of two months from to-day.

We further direct that the departmental enquiry against the applicant should be finalised and a final order should be passed by the Disciplinary Authority on or before 30th November 1988.

Parties to bear their own costs of this application.

Dayanand

(J.A. Dayanand)

Member (A)

B.C. Gadgil
11.8.1988

(B.C. Gadgil)

Vice Chairman