

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No: 82/86.

Shri S.K.More,
599, Sahakar Nagar,
Pune.9.

... Applicant.

V/s.

1. The Union of India,
2. The Chairman,
Central Board of Direct Taxes,
Income Tax Department,
Ministry of Finance,
New Delhi.
3. The Commissioner of Incometax,
Pune.
4. The Commissioner of Income Tax
(Appeals), Pune. ... Respondents.

Coram: Member(A), S.P.Mukerji,
Member(J), M.B.Mujumdar.

Appearance:

Applicant in person and
Shri S.R.Atre for Shri P.M.Pradhan
Counsel for the Respondents.

Oral Judgment:

(Per M.B.Mujumdar, Member (J)) Dated: 24.10.1986

The applicant had filed Writ Petition No.2257 of 1983 in the High Court of Judicature at Bombay and the same is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985 where it is numbered as Transferred Application No.82/86.

2. Till February, 1975 the applicant was serving as an Upper Division Clerk, but in February, 1975 he was promoted as Inspector of Incometax and transferred to the Office of the Income tax Officer Special Survey Circle, Pune. On the ground of mis-appropriation of an amount of about 1,31,000 he was suspended w.e.f. 26.4.1975. However, the only reason given in the suspension order was that it was proposed to start departmental proceedings against him. Since the date of

suspension he was given subsistence allowance at the rate of 50% of his pay in accordance with the F.R.53. A charge sheet in the departmental proceedings was served on him on 18.3.1983 i.e. about 8 years after the order of suspension. On 16th of May, 1983, he filed Writ Petition in the High Court and by an interim order passed on 29.7.1983 he is being given subsistence allowance at the rate of 75% of his pay from May, 1983 onwards. By an order passed on 16.4.1986, the application is dismissed and he has preferred an appeal against that order of dismissal.

In the Writ Petition which is transferred to us he has submitted that the applicant had in substance prayed that he should be given subsistence allowance at the rate of 75% of his pay from 27.10.1975 i.e. from the expiry of the period of six months from the date of his suspension. The relevant provision for the purpose of this case is contained in F.R.53(1) which reads as follows:-

" 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 ~~if~~ had he ~~not~~ 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 Govt. servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowances 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."

Clause B of Sub-rule 1 and sub-rule 2 are not quoted as they are not relevant. We may point out that the reference to three months in the above provision was substituted in 1982 in place of the six months.

According to the provisions of sub-rule 1 (ii)

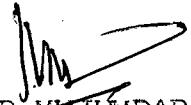
(a) (i) and (ii) the amount of subsistence allowance is to be increased by suitable amount not exceeding 50% of the subsistence allowance admissible to an employee during the period of the first 3 months, if the concerned authority finds that the period of suspension is prolonged for reasons not directly attributable to the employee. The provisions further provide that if it is found that period of suspension is prolonged due to reasons directly attributable to the employee then the authority is empowered even to reduce the subsistence allowance.

We do not find from the record that the period of suspension was prolonged due to any reason which can be attributed to the applicant. The respondents have filed the affidavit of Shri M.G.Kamat, Income-tax Officer in the Office of the Income-tax Commissioner, Pune. In para 10 of the affidavit it is stated that the Commissioner of Income-tax, Pune had reviewed the order for granting subsistence allowance on 21.6.1977 and maintained the amount which was fixed in October, 1976. It is further stated that thereafter every 6 months the review was being taken by the concerned authority in respect of the subsistence allowance. But there is nothing to show in the affidavit or in the record which may lead us to the inference that the period of suspension was prolonged due to some action which can be attributed to the applicant. It is not the case of the Respondents ~~that~~ though they could not file the charge sheet in time because of some stay order obtained by the applicant from some Court or the other. We have therefore, no hesitation in holding that the period of suspension was not prolonged due to any reason which can be directly attributed to the applicant. We therefore, hold that the applicant will be entitled to subsistence allowance at the rate of 75% of his pay from 27th October, 1975. According to the interim order passed by the High Court the applicant is being given subsistence allowance at that rate from May, 1983.

Hence he will be entitled to subsistence allowance at the rate of 75% of his pay only for the period from 27th October, 1975 till the end of April, 1983.

We therefore, confirm the order passed by the High Court on 29th of July, 1983 and direct that the Respondents shall pay arrears of subsistence allowance to the applicant at the rate of 75% of his pay for the period from 27th of October, 1975 till 30th April, 1983, by deducting the amounts which ~~have~~ ^{been} already paid to him. No order as to costs.


24.X.86
(S.P.MUKERJI)
MEMBER(A)


(M.B.MUJUMDAR)
MEMBER(J).

Received the copy
of the Judgement
of the Court
S.K. More
(Applicant)
31-10-1986