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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 484/89

Transfer Application No: ---

DATE OF DECISION 6-4-1993

Nasirali Fazal Merchant ----- Petitioner

Mr.M.A.Mahalle ----- Advocate for the Petitioners

Versus
Union of India and ors.

----- Respondent

Mr.V.S.Masurkar ----- Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member (A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

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

} *no*

(V.D.DESHMUKH)
M(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.484/89

Nasirali Fazal Merchant

.. Applicant

-versus-

1. The Chief Commissioner of
Income Tax (Admn.)
Bombay,
Aaykar Bhavan, M.K.Marg,
Bombay.
2. The Commissioner of
Income Tax,
Bombay City XII Bombay
Aayakar Bhavan,
M.K.Marg,
Bombay.
3. The Dy. Commissioner of
Income Tax (Admn.)
Aayakar Bhavan, M.K.Marg,
Bombay.
4. The Drawing and Disbursing
Officer
Estate Duty Range,
Piramal Chambers,
Lalbaugh,
Bombay.

.. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri V.D.Deshmukh, Member(J)

Appearances:

1. Mr.M.A.Mahalle
advocate the
applicant.
2. Mr.V.S.Masurkar
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 6-4-1993
(Per V.D.Deshmukh, Member(J))

The applicant was working as
Tax Assistant in the office of Estate Duty
Officer, Bombay at the relevant time. While
he was working as such he was suspended on
8-2-1980 and was ultimately dismissed on
8-1-1987. The order of dismissal was challenged
and pursuant to the decision of the Hon'ble
Supreme Court in the case of Ramzankhan/the
dismissal order was set aside with liberty

to the respondents to proceed with the departmental enquiry in accordance with law.

2. The short question involved in this case is as regards the subsistence allowance payable to the applicant during the period of suspension i.e. from 8-2-80 to 8-1-1987. It is not in dispute that the subsistence allowance has been paid as per the then salary of the applicant, but the claim of the applicant is that after the revision of pay scales by the IVth Pay Commission he is entitled to subsistence allowance based on the revised pay scale. He made such representations on 20-11-86 and repeated the representation on 16-8-88, but he has^d not received any reply till the date of the application. It is not in dispute that the pay scale pertaining to the post of the Tax Assistant in the Office of the Estate Duty was revised/^{along with others} by the IVth Pay Commission. The applicant relies upon the judgment of this Tribunal in Misc. Petition No. 186/1988 in O.A. 664/87, Shri Jagdish Ramdhan Singh vs. The Commissioner of Income Tax and another decided on 27-06-1988. This Tribunal held that once the salary and allowance attached to the post held by the applicant were increased the subsistence allowance had also to be increased accordingly, because the subsistence allowance was calculated on percentage of the pay and allowance pertaining to the post held by the person under suspension. This decision was again based on the decision of this Tribunal

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in O.A.676/87. In view of this decision of the Tribunal and also as we ^{are} ~~have~~ in full agreement with the principle laid down we find that the applicant is entitled to the relief claimed.

3. The respondents had pointed out that the SLP had been filed against the order passed on the same line and the SLP being Union of India vs. Shripad Laxman Pol is pending in the Supreme Court. However, admittedly, no stay has been granted by the Hon'ble Court. On the last occasion the learned counsel for the respondents was directed to ascertain the position of the SLP I.A.No.1/89 in the above case and it is stated that the SLP is still pending. It was also brought to our notice by the learned counsel for the respondents that the applicant has been removed from service by the order passed by the disciplinary authority on 16-3-93. However, so far as the payment of subsistence allowance during the period of earlier suspension is concerned this order of removal cannot have any effect. The learned counsel for the respondents also wants us to only mention ^{thus} ~~on~~ record.

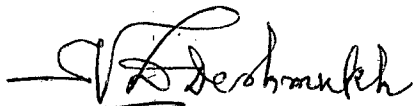
4. In the result the application is allowed and the respondents are directed to pay to the applicant ~~SMSMS~~ ^{and} subsistence allowance including the dearness allowance raised from-time-to-time on the basis of the IVth Pay Commission during the period of suspension 8-2-80 to 8-1-87. This order shall be implemented within

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three months from the date of receipt of a copy
of this order. No order as to costs.



(V.D. DESHMUKH)
Member (J)



(M.Y. PRIOLKAR)
Member (A)

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