

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A. NO.560/1996

Friday, this the 19th day of October, 2001.

HON'BLE SHRI S. L. JAIN, MEMBER (J)

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

J.S.Kharat,  
Ex. Driver 'V' under  
Divisional Railway Manager,  
Central Railway, Bombay VT  
R/O 212/8376 Kannamwar Nagar-I,  
Vikhroli (E), Mumbai-400083.

... Applicant

( By Shri L.M.Nerlekar, Advocate )

-versus-

1. Union of India through  
Divisional Railway Manager,  
Central Railway, Bombay VT.

2. Secretary, Railway Board,  
New Delhi.

... Respondents

( By Shri S.C.Dhawan, Advocate )

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has assailed non-payment of subsistence allowance during the period of suspension on the basis of revised pay scales as determined by the Fourth Central Pay Commission (CPC) w.e.f. 1.1.1986. He claims that subsistence allowance should be paid to him on the basis of revised pay as per the recommendations of the Fourth CPC which he would have drawn had he remained on duty.

2. The applicant's case is that while working as a Goods Driver at Kalyan he was involved in an accident on

24.12.1985 and was placed under suspension from 25.12.1985. On the basis of an enquiry under Railway Servants (Discipline & Appeal) Rules, 1968 he was removed from service vide order dated 4.6.1986 passed by the disciplinary authority. His appeal against the order of removal from service was dismissed by the appellate authority by order dated 12.8.1986. His revision petition was also rejected. He challenged the above punishment orders before the Tribunal in OA No.662/1989 which was decided by order dated 26.10.1994 setting aside the orders passed by the disciplinary authority and the appellate authority with a direction to the respondents to appoint a fresh enquiry officer to continue the enquiry from the stage of cross examination of witness No.7. The suspension of the applicant was ordered to have revived. The competent authority was directed to examine the question of payment of subsistence allowance in accordance with rules, etc. etc. According to the applicant, whereas initially he was paid subsistence allowance at the revised rates of pay as per the recommendations of the Fourth CPC, subsequently his subsistence allowance was reduced on the basis of last drawn pay, in view of the Railway Board's order dated 30.11.1993 at Ex.A. The applicant has stated that the impugned orders referred to rule 6(1) of the Railway Servants (Revised Pay) Rules, 1986 (for short, the 1986 rules) which lays down that "where a railway servant is under suspension as on the 1st day of January, 1986, the option may be exercised within three months of the date of

his return to his duty if that date is later than the date prescribed in this sub-rule". However, the subsistence allowance in such cases is not to be regulated with reference to the pay based on the revised pay rules. According to the said circular, the revised pay rules do not regulate the service benefits like subsistence allowance or leave salary etc. which are to be regulated in accordance with statutory provisions/orders regulating that particular aspect of service. The subsistence allowance is linked to "leave salary" and not "pay" and should, therefore, be regulated accordingly. The leave salary payable to a railway servant is governed by rules 544-547 R-I and pay during suspension is governed by rule 1342-R-II. Referring to rule 20 of the Railway Establishment Rules, it is stated that subsistence allowance is payable at an amount equal to the leave salary which the employee 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 is also payable. If the period of suspension exceeds three months, the authority which ordered the suspension shall be competent to vary the amount of subsistence allowance for the subsequent period of suspension. The amount of subsistence allowance may be increased by 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 for



reasons to be recorded in writing, not directly attributable to the railway servant. The amount may even be reduced by suitable amount not exceeding 50% of the subsistence allowance admissible during the period of six months if, in the opinion of the said authority, the period of suspension had been prolonged due to reasons, reduced in writing, directly attributable to the railway servant.

3. In pursuance of the directions contained in the Tribunal's order dated 26.10.1994, a fresh enquiry was conducted and the applicant was imposed the penalty of compulsory retirement from service vide order dated 18.1.1996. The suspension order of the applicant which was deemed to have continued was not revoked till the order of compulsory retirement dated 18.1.1996 was passed. As such the applicant was allowed subsistence allowance on the basis of last pay drawn before suspension, i.e., on 24.12.1985 and not on the basis of the revised pay scale as applicable on 1.1.1986.

4. The grounds taken in the application are as follows :

(a) it is a well settled law that subsistence allowance is to be paid at the rate of revised pay scales;

(b) even the definition of "leave salary" states that leave salary will be calculated on the basis of pay which the employee would have drawn had he remained on duty, and,



therefore, the payment of subsistence allowance is required to be calculated on month-to-month basis.

5. The respondents have filed a written statement and have opposed the claims of the applicant. According to the respondents, the applicant was wrongly paid subsistence allowance on the basis of the revised pay scales. The mistake was detected by the accounts office while verifying the due and drawn statements for arrears of subsistence allowance for the period 4.6.1986 - 30.12.1994. According to the respondents, the Railway Board's instructions contained in letter dated 30.11.1993 (Ex.A) provide that the subsistence allowance in case of an employee under suspension as on 1.1.1986 is not to be regulated with reference to the pay based on the revised pay scales, but has to be regulated in accordance with the statutory provisions. The suspension order of the applicant was deemed to have continued after the Tribunal's order of 26.10.1994 till the date of fresh order of compulsory retirement made on 18.1.1996. As such, the applicant is entitled to subsistence allowance on the basis of the last pay drawn before suspension, i.e., on 24.12.1985. The respondents have submitted that the applicant's subsistence allowance has to be regulated in terms of Rule 1342 of the Indian Railway Establishment Code (IREC) being an amount equal to the leave salary which he would have drawn had he been on leave on half average pay or on half pay, in addition to dearness allowance admissible on the basis of

such leave salary. The respondents have further stated that as per rule 544 a railway servant who proceeds on leave on average pay is entitled to leave salary equal to the pay drawn immediately before proceeding on leave on average pay. The respondents have, on the basis of the above contentions, stated that subsistence allowance of the applicant cannot be regulated on the basis of the revised pay scales as per the recommendations of the Fourth CPC.

6. We have considered the pleadings and the rival contentions of the parties on the point whether the applicant is entitled to subsistence allowance computed on the basis of revised pay scales as determined by the Fourth CPC effective from 1.1.1986. We are considering the relevant case law as follows :

- 1) **Sumer Chand Khajuria v. State & Ors.**, 1991 (3) SLJ 168 (decided by J&K High Court on 17.7.1990).
- 2) **Namdeo Sitaram Kadpate v. Union of India**, 1997 (2) ATJ 296 (Full Bench, CAT, decided on 8.7.1997).
- 3) **Umesh Chandra Misra v. Union of India**, (1993) 24 ATC 243 (Supreme Court).
- 4) **Swarnamba B.R. v. Karnataka State Agricultural Marketing Board**, 1988 (2) SLR 541, decided by the Karntaka High Court on 18.4.1988.

It is seen that the Full Bench judgment in the case of **Kadpate** (supra) has held that the applicant in that case

W

was not entitled to subsistence allowance on the basis of the revised pay scale introduced from 1.1.1986. In the case of **Khajuria** (supra) it was decided on the contrary that the employer is duty bound to pay the subsistence allowance to a suspended employee on the basis of the revised pay scale. In fact, it is stated on the facts of that case in para 12 that the "conduct of the respondents in not making the payment of the subsistence allowance inclusive of the benefit of revised pay-scale is regrettable and condemnable". In the case of **Umesh Chandra Misra** (supra) it was held that the subsistence allowance has to be paid "on the basis of the revised scale of salary, if any, which was prevalent and due to the appellant during the relevant period for which the subsistence allowance is directed to be paid". The matter has also been considered at length by the Karnataka High Court in the judgment in the case of **Swarnamba** (supra). Even though the matter relates to Karnataka Civil Services Rules, the issue decided is the same as before us in the present case. It was held that the subsistence allowance is payable on the basis of the revised pay scales "for the appropriate periods". It is relevant to mention here note 3 under rule 7 of CCS (Revised Pay) Rules, 1997 (for short, the 1997 rules) as contained in notification No.F.50(1)/IC/97 dated 30.9.1997 (Bahri's Compilation on 5th Pay Commission Report). Note 3 reads as follows :

"Where a Government Servant is on leave on the 1st day of January, 1996, he shall become entitled to



pay in the revised scale of pay from the date he joins duty. In case of Government Servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings."

7. As is clear from note 3 relating to the 1997 rules and rule 6(1) of the 1986 rules that there are specific provisions inserted while amending the pay rules with reference to the Fourth and Fifth CPCs, the case law cited above relates to revisions made in respect of earlier Pay Commissions. However, the note 3 relating to the 1997 rules has been inserted despite rulings of the Courts referred to above. In the backdrop of the decisions of the High Courts and specific provisions made in the 1986 and the 1997 rules, we are faced with a situation which needs to be resolved.

8. Under the circumstances discussed above, we have considered the matter carefully and are of the view that it will be appropriate that the matter is considered by a Larger Bench. We, therefore, refer this case to the Chairman of the Tribunal recommending that a Larger Bench may be constituted to decide the issue. The terms of reference before the Larger Bench would be as follows :

(a) Whether second proviso to rule 6(1) of the Railway Servants (Revised Pay) Rules, 1986 and whether the provisions in note 3 to rule 7 of CCS (Revised



Pay) Rules, 1997 would imply that the ratios in

Vh the cases of Swarnamba, 1988 (2) SLR 541, and Misra, (1993) 24 AIC 243, Khajuria, 1991 (3) SLJ 168 would apply to government servants under suspension at the relevant time?

(b) Any other issue considered germane to the issue by the Larger Bench.

Hence, we do not pronounce any order in the present OA and refer it to the Chairman in the above terms.

V.K. Majotra

( V.K. Majotra ) 19.10.2001  
Member (A)

S.L. Jain

( S.L. Jain )  
Member (J)

/as/

dt-19/10/01

Original sent  
to Applicant, 21/10/01  
6a 22/10/01

W