

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 945 of 1999.

Dated this Friday, the 10th day of March, 2000.

D. K. Valvi & 8 Others, Applicants.

Shri I. J. Naik, Advocate for the
applicants.

VERSUS


Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
(iii) Library.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 945 of 1999.

Dated this Friday, the 10th day of March, 2000.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

1. D. K. Valvi,
Forest Guard.
2. A. N. Jadav,
Forest Guard.
3. S. Z. Mishal,
Forest Guard.
4. D. J. Chauhan,
Dy. R.F.O..
5. R. K. Patel,
Forest Guard.
6. P. N. Solanki,
Forest Guard.
7. V. D. Pagi,
Forest Guard.
8. M. D. Javalia,
Forester.
9. M. R. Nadge,
Forest Guard.

...

Applicants.

C/o. Office of the
Dy. Conservator of Forests,
P. O. Silvassa,
Pin - 396 230.

(By Advocate Shri I. J. Naik).

VERSUS

1. Union of India through
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block, New Delhi.
2. The Administrator,
Union Territory of Dadra
& Nagar Haveli,
Secretariat, Fort Area,
P.O. Moti Daman.

...2



3. The Collector,
Dadra & Nagar Haveli,
P.O. Silvassa.

4. The Conservator of Forests,
Dadra & Nagar Haveli,
P.O. Silvassa.

... Respondents.

(By Advocate Shri V. S. Masurkar).

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the nine applicants challenging the order of suspension and also seeking enhancement of subsistence allowance and other reliefs. Respondents have filed reply. We have heard Shri I. J. Naik, the Learned Counsel for the applicants and Shri V. S. Masurkar, the Learned Counsel for the respondents regarding admission. Since the point involved is a short point, we are disposing of the O.A. at the admission stage.

2. At the commencement of the hearing, the Learned Counsel for the applicants submitted that for the present, he will be confining his claim in the O.A. only for the question of enhancement of subsistence allowance and therefore, we are not considering other contentions in the O.A. and those questions are left open to be raised by the applicants as and when necessary according to law.

3. All the applicants are in the Forest Department of Union Territory of Dadra & Nagar Haveli. They came to be suspended on different dates, which are given in para 1 of the O.A. at page 3. The applicants have been paid 50 % of the subsistence allowance as provided under the rules. The applicants' contention is,

3

after the expiry of three months, the rate of subsistence allowance has to be increased to 50% of the subsistence allowance and, therefore, the applicants should get in all 75% of the subsistence allowance. Therefore, the applicants' counsel submitted that respondents be directed to pay 75% of the monthly emoluments as subsistence allowance.

4. The respondents in their reply have taken the stand that joint application filed by these nine persons is not maintainable. ^{It is} ~~He~~ further stated that applicants have not exhausted the statutory remedy provided under the rules. Then on merits, it is stated that applicants came to be suspended on serious allegations of tampering with the forest property like cutting of trees, etc. Since serious allegations are made against the applicants, they are not entitled to increase in the subsistence allowance. It is also alleged that applicants have not submitted employment certificate, as required under the rules.

5. As far as the first objection regarding joint application is concerned, though we agree that normally the applicants should have filed separate O.As. since the date of suspension are different and allegations are different, but in this case, the applicants are now confining their claim only about enhancement of subsistence allowance on a legal ground. Since this is a common ground to all and it is a legal point, we do not think that there is any legal ^{obstacle} ~~objection~~ for the applicants to file joint application. We have already allowed M.P. No. 764 of 1999

...4




by order dated 29.11.1999 permitting the applicants to file joint application. In view of the reliefs now pressed and the short legal point involved, we do not find any ground to recall our order dated 29.11.1999.

6. As far as the objection regarding statutory appeal is concerned, it is not a mandatory bar for the Tribunal to receive an application without exhausting statutory remedies. What is provided under Section 20 of the Administrative Tribunals Act is only an enabling provision that normally Tribunal should not accept applications where statutory remedies are not exhausted. The Tribunal in a given case can admit an O.A. even if statutory remedies are not exhausted. Having regard to the facts and circumstances of the case and since the point involved is a short point, we do not find that not exhausting statutory remedy comes in the way of the Tribunal in entertaining the application and passing an order.

7. Now coming to the merits of the case, as per F.R. 53, a Government servant is entitled to 50% of the emoluments as subsistence allowance for the first three months. After three months, the rule says that the competent authority may increase the subsistence allowance to the extent of 50% of the subsistence allowance, which would come to 75% of the emoluments.

The respondents' counsel submits that there are serious allegations against the applicants of misconduct, alleged tampering with the forest produce and cutting of trees. We do not know under what circumstances the competent authority has not considered the increase of the subsistence allowance. The



necessary orders of the competent authority is not produced before us. Therefore, in the facts and circumstances of the case, we only give a direction to the competent authority to consider the claim of the applicants for subsistence allowance under F.R. 53 and then pass a speaking order. Either he must grant the enhancement in the rate of subsistence allowance as provided under Rule F.R. 53 or he must refuse to increase it by giving reasons which are permissible in law. The competent authority should pass a speaking order in this aspect within two months from the date of receipt of a copy of this order. If any adverse order is passed, then the applicants may challenge the same according to law. Advisedly, we are not going into the merits of the case ^{merely whether the} ~~normally~~ where applicants as of right are entitled to enhancement of subsistence allowance. We are leaving the matter to the competent authority to apply his mind to the facts of the case and the relevant provision in law and then decide whether the applicants are entitled to increase in the rate of subsistence allowance or not and then pass a speaking order.

8. In the result, the O.A. is disposed of at the admission stage with a direction to the competent authority to pass a speaking order on the claim of the applicants for subsistence allowance, as mentioned in para above. In the circumstances of the case, there will be no order as to costs.



(B. N. BAHADUR)
MEMBER (A).



(R. G. VAIDYANATHA)
VICE-CHAIRMAN.