

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. NB9/2000

DATED: Monday this, the 30 TH DAY OF OCTOBER, 2000

Shri Anant Yadav Amlic Applicant.

(Applicant Shri G.S. Walia, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri V.G. Rege, Adv.)

CORAM

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Shri B.N. Bahadur, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.

N_o


(B.N. Bahadur)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 89/2000

Dated: Monday this the 30th Day of October, 2000.

Coram: Hon'ble Shri Justice Ashok Agarwal, Chairman
And
Hon'ble Shri B.N. Bahadur, Member (A)

Shri Anant Yadav Amolic
Inspector of Income Tax
(Under Suspension)
Office of Assistant
Commr. of Income Tax
Circle I (i) Admn
Pune.

Maharashtra
Res. at S.No.6,
Near Inamdar School,
Vadgaon Sheri,
Pune - 411 014.

(Applicant by Shri G.S.Walia, Advocate)

Applicant

vs.

1. Union of India through
Commissioner of Income tax II
Pune, Maharashtra.

2. Assistant Commissioner of
Income Tax
Circle I (i) Admn.
Maharashtra

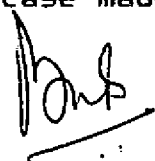
(Respondents by Shri V.G.Rege, Advocate.)

Respondents.

O R D E R

[Per: B.N. Bahadur, M(A):]

The Applicant in this case comes up to the Tribunal seeking the relief for a declaration that he is entitled to the revised Pay Scales as determined by the 5th Pay Commission, with effect from 1.1.1996. He claims that subsistence allowance should be paid to him on the basis of the revised scale. The case made out by the Applicant is as below.



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2. The Applicant was placed under suspension by an Order dated 4.6.1993, (Ex.B) on the ground, *inter alia*, that a criminal offence against the Applicant was under investigation. The Applicant was paid subsistence Allowance, equal to 50% of his basic salary. This subsistence Allowance was increased to 75%, with effect from 1.11.1993. The Applicant states further that the Pay Scales were revised as a result of the Fifth Pay Commission's recommendations and accordingly, the Scale of the pay of Income Tax Inspector was also revised with effect from 1.1.1996. The grievance of the Applicant is that the Subsistence Allowance in his case should have been increased by linking it to his the Revised Pay Scales and that this has not been done. He made a representation which was recommended vide letter dated 12.10.1999 (Ex.D). However, Applicant continued to get the subsistence allowance at the same rate.

3. The grounds taken in the Application are as follows:

(a): There is no severance of Master-Servant relationship, when an employee is placed under suspension. (b) There is discrimination involved by the implicit creation of two types of pensioners viz. those suspended before 1.1.1996 and those suspended subsequent to this date. (c) The applicant also takes up the ground relating to the exercise of option raised in the reply of Dy. Commr. of Income Tax through the impugned letter dated Dec. 29, 1999 (Ex.A) and disputes the stand taken by the Govt. in this letter. He avers that the rule cited is not relevant.

4. The Respondents have filed a written statement in Reply, and have resisted the claims of the Applicant. It is averred that the Application is not tenable in law, and there is no cause

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of action for the Application, in the face of the statutory Rules relevant to the case. The interpretation of the Applicant regarding the CCS (Revised Pay Scales) 1997 are termed by the Applicant are vague and misleading. It is further stated that sub rule (2) of Rule 2 of the aforesaid CCS (Revised) Pay Rules 1997 are not applicable to certain categories of employees as explained in para 4 of reply Statement. The provisions of F.R. 53 are also discussed by the Respondents in their Written Statement in support of their contentions.

5. We have heard the Learned Counsels on both sides and have also perused the papers in the case. The case law cited have also been considered.

6. Arguing the case on behalf of the Applicant, their Learned Counsel, Shri G.S. Walia, elaborated on the grounds referred to in para (3) above. He contended that since the master-servant relationship did not come to an end by the fact of suspension of the Applicant, he has to be governed by the same Rules, including Pay Rules, which govern other employees. He also argued on the point of discrimination, and took the plea that two classes of suspended employees cannot be created by Govt. and this is implicit in the action of the Govt. when it denies enhancement of subsistence allowance to the Applicant. He sought the support of the well-known case of *Nakara* in this regard, albeit admitting to the intervention of the Learned Counsel on the other side regarding the ratio in this case having been distinguished by the Hon'ble Supreme Court later ~~and~~ ⁱⁿ more recent cases.

7. Shri Walia also argued in detail with reference to the CCS (Rules) referred to above, to make the point that the option was relevant only to the limited extent of date of increment. He

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contended that the Rules did not envisage options per se to be exercised by Govt. Servants of acceptance of revised pay or otherwise. The final and important thrust of argument of the learned Counsel for the Applicant was based on detailed discussions in regard to three cases cited. These are: (1) *N.S.Kadpate vs UOI* [1997 (2) ATJ 296] (2) *S.C. Khajuria vs. State and Ors.* decided by J & K High Court on 17.7.1990 (1991 (3) AISLJ 168] and (3) *G.R. Swarnamba vs. Karnataka State Agricultural Marketing Board* decided by Karnataka High Court on 18.4.1998 (1998 (2) SLR 541). The other cases cited by learned Counsel for Applicants are follows:

(1) *S.V. Singh, vs. UOI & Ors* 1988 (2) SLR 545

(2) *P.L.Shah vs. UOI & Ors.* [1990] 14 ATC 52

We will come to the discussion of this case law ahead.

8. The learned Counsel for the Respondents, Shri V.G. Rege, also argued the case in detail, first taking support of his Written Statement. This relies very substantially on the CCS (Revised PayRules) 1997 (for short 1997 Rules). He argued that suspended employees were only paid a percentage of leave salary (it being stressed by learned Counsel that it was leave salary and not salary). Thus, the suspended employee could not claim automatic parity with the normal employees. It was argued that no increments, for instance, were allowed during the period of suspension. The example of a person on leave as on 1.1.1996 not being eligible to revised Pay Scales, as per Rules, till he joins duty was also cited, and the point made that this would also apply, in principle, to suspended employees.

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9. Learned Counsel, thus, sought to depend on F.R. 53 (1) & (2) in this regard. He took support from the case of *V. Bhaskaran Nair vs. Supdt. of Post Offices* (1993 (23) ATC 4761 and also reacted at length on the ratios of the case law cited by learned Counsel for Applicant referred to above.

10. One of the important planks of argument of the Learned Counsel for Respondents ~~at~~ Shri V.G.Rege, related to a provision in the rules of 1997 as contained in Notification No.F.50 (1)/IC/97 dated 30.9.1997 as contained in Bahri's compilation on 5th Pay Commission Report containing these Rules. The provision depended upon relates to Note 3 under Rule 7 ^{of CCS (Revised Pay) Rules 1997} which reads as follows:

Note 3.: 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.

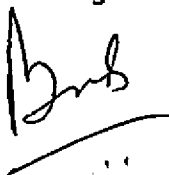
Shri Rege argued that this Note was a part of the Rule and did not agree to the contention made by Shri Walia that the Note was not part of the Rule. Shri Rege contended that this Rules was ^{not} ~~fully~~ clear enough, and it led to the conclusion that no upward revision in subsistence allowance could be claimed.

11. We must state that we do not have much difficulty with the arguments raised regarding non severance of master-servant

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relationship between employee and Govt. in cases of suspension of an employee. However, non severance of such relationship cannot *ipso facto* mean that the relief of linkage of subsistence allowance to the revised pay scale would come as an automatic right or a natural corrolary. Similarly, we are not really convinced that there is an implied discrimination between two sets of suspended employees as laid out by the Applicants merely because of the Ratio in Nakara's case. This case has been explained in well known judgements by the Supreme Court more recently, and the question of entitlement to higher subsistence allowance, as claimed, cannot be decided on this issue, standing alone.

12. We now come to the case laws cited, specially the two cases decided by the High Courts of J & K and Karnataka, and the Full Bench judgement in the case of *N.S. Kadpate*. We have gone over these judgements with the assistance of both the Learned Counsels. In the first place, it is seen that the Full Bench judgement in the case of *Shri Kadpate* has decided the issue, and held that the Applicant in that case was not entitled to the subsistence allowance on the basis of the Revised Pay Scale, which was introduced from 1.1.1986 (importantly the matter was being dealt with reference to the 4th Pay Commission Recommendations). The Full Bench judgement had, of course, decided the matter with reference to the 1986 Rules. Nevertheless, it is clear that the principle has been settled. In the case of *Sumer Chand Khajuria* decided by the Jammu & Kashmir High Court 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, at para 12, that "the conduct of the Respondents in not making the payment of subsistence allowance inclusive of the



benefit of revised Pay Scale is regrettable and condemnable".

13. The matter has also been considered at length by the Karnataka High Court in the judgement in the case B.R. Swarnamba referred to above. Even though the matter relates to Karnataka Civil Services Rule, the issue decided is squarely the one that is before us in the present case. It has been decided that the subsistence allowance has to be paid on the basis of the revised Pay Scales (for the appropriate period).

14. The important element that comes in this case is indeed the fact brought in para (10) above regarding Note No.3 in the 1997 Rules. Now, here is a case of a specific provision inserted while amending the Pay Rules with reference to the *Fifth Pay Commission*. The case law discussed above, in both cases of the two High Courts, as also in the Full Bench judgement, relates to the revisions made in respect of earlier Pay Commissions. It is acceptable, in legal terms, for a Govt. to make changes in Rules prospectively, after judicial interpretations, and the question is whether this Note.3 would be applicable now, in spite of the rulings of the two High Courts referred to.

15. On the one hand, thus, the basic issue has been decided and pronounced upon by High Courts in the two cases of *Khajuria* and *Swarnamba* discussed above. On the other hand, the 1997 Rules make a specific provision in the aforesaid Note.3 to the effect that a suspended Govt. Servant shall draw subsistence allowance based on the existing Scale of Pay, and his pay in the Revised Scale will be subject to Final Orders on the pending disciplinary proceedings. We are thus faced with a situation which needs to be resolved.



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16. 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 be constituted to decide the issue. The terms of Reference before the Larger Bench would be as follows:

(a) whether the provisions in Note 3 to Rule 7 of CCS (Revised Pay) Rules 1997 would imply that the ratios in the cases of *Swarnamba* and *Khajuria* referred to above would not apply to suspended Govt. Servant's prospectively, after the issue of these Rules.

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

17. Hence, we do not pronounce any order in the O.A., and refer it to the Chairman, recommending the constitution of a Larger Bench as stated above.

B.N. Bahadur
(B.N. Bahadur)
Member (A)
sj*

Ashok Agarwal
(Ashok Agarwal)
Chairman