

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 523/2000

MUMBAI. THIS THE 15TH DAY OF JUNE, 2001

HON'BLE MR. SHANKAR RAJU, MEMBER (J)

Suryabali Devraj Pandey
R/o No.5, Harharwala,
Building No.13, Ground Floor
N.M.Joshi Marg, Mumbai - 400 011.

...Applicant

(By Advocate Shri S.P.Inamdar)

V E R S U S

1. Union of India,
Through the Secretary/
Director General,
Deptt. of Telecommunication
Sanchar Bhawan, Ashoka Road
New Delhi - 110 001.
2. The Chief General Manager
Mahanagar Telephone Nigam Ltd.
Telephone House, Dadar
Mumbai - 400 028.
3. The General Manager (North)
Mahanagar Telephone Nigam Ltd.
Telephone Exchange Bldg., Wadala
Mumbai - 400 014.

...Respondents

(By Advocate Shri V.S.Masurkar)

O R D E R

BY HON'BLE SHRI SHANKAR RAJU.

The claim of the applicant in this OA is for accord of subsistence allowance w.e.f. 9.3.93 along with interest and quash the impugned order dated 7.2.2000 and also order dated 17.2.2000. The applicant is working as Sub Inspector Phones. He has been chargesheeted for major penalty and was dismissed from service on 13.12.84. The applicant filed an OA before this court which was allowed on 8.8.91 on the ground that the copy of the

2. enquiry report has not been served upon him. On compliance of the Tribunal's order the copy of the enquiry report was served upon the applicant and again the applicant was dismissed by the President on 9.3.99. The applicant again assailed the order of dismissal in OA No.334/93 which was allowed. The respondents were directed to consider the case of the applicant by holding a fresh enquiry. In pursuance of the directions the Assistant Director General vide order dated 8.11.99 conveyed the order of the President to hold a fresh enquiry. The applicant thereafter has been placed under deemed suspension from the date of dismissal and was accorded subsistence allowance under FR 53 from the date of order issued by the President, i.e., on 8.11.99 and was paid the arrears accordingly. The applicant in this OA has assailed the order passed by the President on the ground that as the applicant was placed under deemed suspension w.e.f. 9.3.93 he should have been paid the subsistence allowance from the same date. Withholding of subsistence allowance is contrary to FR 53 (2) as well as Govt. of India's orders under FR 53 (2) (2)(f), which inter alia, provides that in case of deemed suspension the subsistence allowance is to be paid from the retrospective date i.e., from the date of deemed suspension. The applicant has assailed the order of the President by contending that the same is contrary to the rules. The applicant has stated that he has already furnished a certificate required under the law to the effect that he was not gainfully employed w.e.f. 9.3.93 till the date he received remuneration. The applicant

has made a representation in this regard. Placing reliance on the decision of this Court in A.Vasu v. Union of India. 1993 (3) SLJ, CAT. 111, it is contended that the deemed suspension includes the review and it takes retrospective effect the allowances etc. should also be paid accordingly with retrospective date.

The learned counsel for the respondents rebutted the contentions of the applicant and contended that the decision by the President is in accordance with the rules and placing reliance on the decision of the Apex Court in State of U.P. v. Ved Pal Singh, AIR 1997 SC 608 contended that in case of corruption charges one should not be paid back wages. Also placing reliance on Nelson Motis v. Union of India & Anr., 1993 SCC (L&S) 13 it is contended that the deemed suspension is within the parameters of the rules and suspended employee should only be paid salary for the period he was allowed to discharge his duties. The respondents have contended that the Tribunal allowed the OA of the applicant merely on technical ground which would not entitle the applicant any back wages. In the additional affidavit, which was taken on record, the respondents have taken the plea that keeping in view the seriousness of the charge which had been proved the President decided to grant subsistence allowance from the date of the fresh enquiry, i.e., w.e.f. 8.11.99, which was subsequently reviewed and the judgment of the President is inconformity with the ratio

laid down in Ved Pal's case (supra). The learned counsle of the respondents prayed for the dismissal of the present OA.

I have carefully considered the rival contentions of the parties and perused the material on record. Uncontroverted facts are that the OA of the applicant was allowed on technical grounds by this Court and thereafter according an opportunity after supply of the enquiry report the applicant was again dismissed from the service which was subsequently in another OA directing the disciplinary authority to hold a fresh enquiry which President being the disciplinry authority ordered a fresh enquiry on 8.11.99 and by treating the applicant under deemed suspension w.e.f. 8.11.93 allowed him subsistence allowance keeping in view the grave charges against him is concerned, I find that under FR 53 and Govt. of India's instructions pertaining to deemed suspension and OM dated 29.8.63 it has been provided that in case of deemed suspension ^{where} ~~where~~ dismissal, removal etc. have been set aside and the seemed suspension is resorted from the date of the order of the dismissal the Govt. servant on retrospective suspension is also entitled for the subsistence allowance under FR 53. The ratio of Ved Pal Singh's case cited by the respondents is not applicable on the facts and circumstances of the present case as that was a case where the back wages have been disallowed to the petitioner. Regarding the ratio citied by the respondents in Nelson Motis's case is concerned, the same is also distinguished as in that case issue was regarding

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deemed suspension of an employee on account of setting aside of the order of dismissal on technical grounds. The Apec Court in that case has not considered the issue referred to *ibid.* As such the same would have no application in the facts and circumstances of the present case.

I find that the order of the President whereby the applicant though has been treated as on deemed suspension w.e.f. 1993 restricting his right to get pay and allowances w.e.f. 8.11.99 i.e., from the date of the issuance of the order for a fresh enquiry is not in consonance with the provisions of FR-53 and the Govt. of India's instructions contained therein. I am also fortified by the ratio of this Court in A. Vasu's case and hold that the applicant cannot be deprived of the subsistence allowance from the date of his deemed suspension, i.e., in the year 1993.

Having regard to the reasons recorded and discussion made, I allow this OA and direct the respondents to draw and disburse the subsistence allowance to the applicant w.e.f. 9.3.93 to 8.11.99 alongwith arrears and consequential benefits. However, in the facts and circumstances of the case I do not allow any interest on the same. The respondents are further directed to comply with these directions within a period of two months from the date of receipt of a copy of this order. No costs.

S. Rajm
(SHANKER RAJU)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P.NO.100/01, M.P.Nos.986/01 & 987/01

IN

ORIGINAL APPLICATION NO.523 OF 2000.

Shri SuryabaliDevraj Pandey
(By Advocate Shri S.P. Inamdar)

V/s

Union of India & others.
(By Advocate Shri V.S. Masurkar)

...Respondents

CORAM : HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE-CHAIRMAN

HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

TRIBUNAL'S ORDER :

DATE : 08.02.2002.

Contempt Petition No.100/01 was filed against non compliance with the direction of the Tribunal to draw the arrears for the period from 9.3.93 to 8.11.99. The Respondents have submitted that they have paid the amount of Rs.1,27,377/- towards subsistence allowance on 29.01.2002. In view of this, the compliance having been made, The Contempt Petition does not survive.

However, the Learned Counsel for the applicant pleads that he has still not been paid the full amount of arrears on the basis of FR 53(1) to the extent of 50% of admissible revised salary. In our considered view, this can not form the subject matter of a Contempt Petition. It is open to the applicant to take up the matter separately according to Law and Rules.

In the result, the Contempt Petition is dismissed. The proceedings are dropped and notice is discharged.

Earlier, the respondents had filed M.P.NOs 986/01 as well as 987/01 for extension of time to implement the judgment of the Tribunal dated 15.6.2001. Now there is compliance and in view of the C.P.being dismissed, these M.Ps have become infructuous and are disposed off accordingly.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

ssg.