

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No. 429/2001.

Tuesday, this the 6th day of November, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri M.P.Singh, Member (A).

Madhukar Nanaji More,
Shantivan Co-Op. Hsg. Society,
4th Floor, Flat No.403,
Lokmanyanagar,
Pada No.4, Near Dnyanodaya High School,
J.K.Gram Post Office,
Thane - 400 606.
(By Advocate Shri S.P.Kulkarni)

...Applicant.

v.

1. Union of India through
Senior Superintendent of Post Offices,
Thane Central Postal Division,
Thane R.S. P.O. Bldg., 2nd floor,
Near Thane Central Rly. Station,
AT P.O. Thane - 400 601.

2. The Director of Postal Services,
(Mumbai Region),
Office of the Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Bldg.,
P.O. Mumbai - 400 001.

3. Chief Postmaster,
Maharashtra Circle,
Old G.P.O. Bldg.,
2nd floor, near C.S.T. Central Railway,
Fort,
Mumbai - 400 001.

...Respondents.

: O R D E R (ORAL) :

Shri M.P.Singh, Member (A)

The applicant who entered the Postal Department as a Clerk on 8.5.1965 ~~and~~ was promoted as Lower Selection Grade (L.S.G.), under T.B.O.P. Scheme ~~and~~ on 30.11.1983 and was further promoted to Higher Selection Grade (H.S.G.) under B.C.R. Scheme on 1.10.1991. On 17.11.1997, he was charged in a corruption case for allegedly accepting an amount of Rs.1,000/-

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as bribe from a customer. On this charge he was suspended from service on 18.1.1997. It is stated by the applicant that he is being paid subsistence allowance at the rate of 50% and the same has not been increased even after such a long period. The contention of the applicant is that since there is no delay attributable to the applicant, subsistence allowance should be increased from 50% to 75%. He has made a number of representations to the Respondents, but the Respondents have not enhanced the subsistence allowance from 50% to 75%. Hence, he has filed this OA praying for the following reliefs:

- "(a) This Hon'ble Tribunal be pleased to call for the records of the case and on perusal pass an order as deemed fit in the interest of justice.
- (b) Hold and declare that Quarterly reviews regarding revocation and revision (increase/decrease) of subsistence allowance carried out since February, 1998 are arbitrary, autocratic and violative of instructions under Rule 10 of CCS (CCA) Rules, 1965 as well as unjustified on facts.
- (c) Direct Respondents to carry out Review and pass a speaking order regarding revocation and suspension (3 1/2 years old) within one month.
- (d) Direct Respondents to enhance Subsistence Allowance upto 50% of Sub-title (initially fixed at 50% of pay) i.e. upto 75% of pay and pay arrears since 18.2.1998.
- (e) Hold and declare that status quo of subsistence allowance (after three months) is not provided for in the rules."

2. The Respondents in their reply have stated that the applicant was caught red-handed by Anti Corruption Bureau while taking bribe of Rs.1,000/- from Shri P.G.Paithankar on 17.11.1997. Taking into consideration, the nature of offence committed by the applicant, the Reviewing Authority has decided that there is no justification to raise the subsistence

allowance from 50% to 75%.

3. During the course of the arguments, the Learned Counsel for the applicant stated that he does not press for the reliefs claimed at para 8 (b) and (c) and that he is pressing for relief (d) & in para 8th only for enhancement of subsistence allowance from 50% to 75%. He also submitted that since delay in prolongation of suspension is not attributable to the applicant the subsistence allowance is required to be enhanced from 50% to 75% in accordance with Rules and Instructions. To support his claim, he has cited the Supreme Court Judgment in the case of Umesh Chandra Misra Vs. Union of India & Ors. (1993 SCC (L&S) 441), wherein the Hon'ble Supreme Court in a similar case has held as follows:

"Suspension - Subsistence allowance - Judicial review - Scope - Departmental rules requiring periodical review of amount of subsistence allowance depending upon whether or not prolongation of suspension was attributable to the government employee - Amount to be increased from 50% to 75% upon such consideration - Held, Payment of Wages Authority could not itself decide this issue but taking into consideration that (1) facts were undisputed, (2) amount involved was very small, (3) the appeals were pending for a long time, (4) rules position was undisputed and (5) appellant was removed from service before dismissal of his appeal by the High Court against his conviction, matter not remitted to the competent authority - Supreme Court itself ordering increase of the allowance - I.R.E.C. (Vol. II), R. 2043 (ii) (a) - Rly. Board circular dt. 26.1.1996 - Payment of Wages Act, 1936, S. 15 - Practice and Procedure - Constitution of India, Art. 136."

4. On the other hand, the Learned Counsel for the Respondents stated that since the charges against the applicant are serious, the Reviewing Authority had decided not to increase the subsistence allowance.

5. The question for consideration before us is whether the



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subsistence allowance is to be increased when there is a prolonged suspension of the applicant and the delay is not attributable to the applicant. In view of the settled legal position by the Hon'ble Supreme Court and also in accordance with the Rules, when there is no delay attributable to the applicant the subsistence allowance is required to be enhanced from 50% to 75%. We accordingly allow the OA and direct the Respondents to conduct fresh review and consider the enhancement of subsistence allowance from 50% to 75% within a period of two months from the date of communication of this order. The OA stands disposed of with the above directions. No costs.

M.P. SINGH
(M.P. SINGH)
MEMBER(A)

B. DIKSHIT
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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