CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 24 NOV 1988

APPLICATION NOS. 1516 & 1769 /88(F)

W.P. NO. /

Applicant(s)

Shri D.N. Keshava Murthy

V/s

Respondent(s)

The Secretary, M/o Industry, Dept of Industrial Development, New Delhi & another

To

1. Shri D.N. Keshava Murthy
101, Binny Layout
II Phase Vijayanagar
Bangalore - 560 040

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

3. The Secretary
Ministry of Industry
Department of Industrial Development
New Delhi - 110 011

4. The Development Commissioner
Small Scale Industry
Nirman Bhavan
New Delhi - 110 011

5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 22-11-88.

Issued
25.11.88

Encl : As above

SECTION OFFICER
~~DEPUTY REGISTRAR~~
(JUDICIAL)

a person continuing under suspension

of pay scales was entitled for the benefit of revision during the period of his suspension. Sri Rao is undoubtedly right that we have not specifically referred to Rule 6 of the Rules. But, the fact that we have not referred to Rule 6 of the Rules in Krishnamurthy's case would not have made any difference to the conclusion we have reached in that case.

11. We have carefully read Rule 6 of the Rules on which Sri Rao placed considerable reliance to defeat the claim of the applicant. We are of the view that that rule does not place any restriction on the right of the applicant to come over to the revised pay scales even before his suspension is revoked and claim the benefit of the revised pay scales for payment of higher subsistence allowance. On this view, we find no merit in the contention of Sri Rao and we reject the same. On the above discussion it follows that the claim of the applicant for revision of subsistence allowance if he exercises his option to come over to the revised scales of pay from 1-1-1986 has necessarily to be accepted. With this we now pass on to examine the claim of the applicant in Application No.1769 of 1988.

12. Dr. Nagaraja contends that the applicant has been needlessly continued under suspension without making a periodical review for continuance or otherwise as enjoined by the instructions issued by Government from time to time and on such failure, we should revoke the order of suspension and direct the reinstatement of the applicant to duty without any further loss of time.

13. Sri Rao contends that on the very terms of the legal notice Government has to be afforded a resonable time to examine the same and take a decision thereon. He prays for minimum four months time to examine the claim of the applicant and take a decision thereon.

14. We have earlier noticed that on the alleged representation made by the applicant on 14-6-1988 (Annexure-A4) there is a dispute between the parties. On this view, we do not propose to place any reliance on the same. But, on the legal notice issued by the appli-

cant on 13-8-1988 (Annexure-A5) there is no dispute between the parties. Whatever be the failures earlier, which are not necessary to be examined and decided it is neeless to state that to examine the legal notice issued by the applicant on 13-8-1988 and take a decision thereon, Government undoubtedly requires a reasonable time. We are of the view that on the facts and circumstances of the case, it would be reasonable to permit Government to examine and decide the matter with expedition and in any event on or before 31-3-1989.

15. In the light of our above discussion we make the following orders and directions:

(i) The applicant will exercise his option in favour of the revised scale applicable to the post of Assistant Director with effect from 1-1-1986 within 15 days from to-day;

(ii) On receiving the option as indicated above the respondents will determine the pay in the revised scale to which the applicant would have been eligible with effect from 1-1-1986 had he not been under suspension. For the purpose of fixing the applicant's pay in the revised scale, the respondents will take into account the pay in the old scale drawn by the applicant immediately before his suspension without any increments;

(iii) The respondents will redetermine the subsistence allowance due to the applicant with reference to the pay in the revised scale to be fixed as indicated at (ii) above. Since the respondents have already raised the substance allowance of the applicant to 75% of the pay earlier drawn by him, the subsistence allowance as from 1-1-1986 should be calculated at 75% of the pay in the revised scale;

(iv) Arrears of subsistence allowance due to the applicant in terms of our order at (iii) above should be paid tothe applicant within two months from the date of receipt of this order; and

(v) All future payments of subsistence allowance till the applicant remains under suspension should be paid at the rate determined in accordance with our order at iii) above.

(vi) We direct the respondents in Application No.1769 of 1988 to consider and dispose of the representation made by the applicant in his legal notice dated 13-8-1988 with all such expedition as is possible in the circumstances of the case and in any event not later than 31-3-1989.

16. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

17. Let this order be communicated to all the parties within a week from this day.

TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-
VICE-CHAIRMAN. 26.4.89.

Sd/-
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL:BANGALORE

DATED THIS THE 22ND DAY OF NOVEMBER,1988.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBERS 1516 AND 1769 OF 1988

D.N.Keshava Murthy,
S/o late Sri Narasimha Murthy,
Aged 51 years,
No.101, Second Phase, Binny Limited,
Vijayanagar, Bangalore-40. .. Applicant in both Applications.

(By Dr.M.S.Nagaraja,Advocate)

v.

1. The Union of India
by the Secretary to Government,
Ministry of Industries,
Department of Industrial Development,
New Delhi. .. Respondent in A.No.1769/88

2. The Secretary,
Ministry of Industry,
Department of Industrial Development,
New Delhi-11.

3. The Development Commissioner,
Small Scale Industry,
Nirmana Bhavan, New Delhi-11. .. Respondents 1 and 2 in A.No.1516 of 1988.

(By Sri M.Vasudeva Rao,Standing Counsel)

These applications having come up for hearing this day, Hon'ble Vice-Chairman made the following:

ORDER

As the parties in these cases are common and the questions that arise for determination are inter-connected, we propose to dispose of them by a common order.

2. Sri D.N.Keshava Murthy who is the common applicant before us was working as Assistant Director (Grade-I) (Ceramics) in the Small Industries Development Organisation, Department of Industrial Development, Ministry of Industry, Government of India [illegible]ember 1979. In Order No.13/9/79-Vig. dated 12-12-1979 (Annexure-A1 in

Application No.1768 of 1988) Government of India placed the applicant under suspension on the ground that he was involved in a criminal offence and its investigation was pending. On the completion of the criminal investigation a criminal prosecution in C.C.No.22 of 1979 in the Court of the Special Judge (Principal City Civil & Sessions Judge) Bangalore, has been launched and is still pending disposal before that Court. The applicant claims that on 14-6-1988 (Annexure-A4 in Application No.1769 of 1988) he has made a representation to Government through the Director, Small Industries Service Institute, Cuttack ('Director') for revocation of the suspension order made against him on 12-12-1979. But, the respondents claim that that representation has not been received by them so far. On the view we propose to take, we consider it unnecessary to record our finding on this aspect.

3. Whatever be the position with reference to the representation made by the applicant on 14-6-1988, there is no dispute that on 13-8-1988 the applicant got issued a legal notice through his Advocate calling upon Government to revoke the order of suspension made against him on 12-12-1979 and that notice stands undisposed of to this day. In Application No. 1769 of 1988 filed on 21-10-1988 under Section 19 of the Administrative Tribunals Act,1985 ('the Act') the applicant has sought for a direction to the respondents to forthwith revoke the order of suspension and take him to duty.

4. Even before making Application No.1769 of 1988, the applicant on 5-9-1988 has made an application in A.No.1516/88 under Section 19 of the Act for a direction to the respondents to extend him the benefit of the revised pay scales in making payment of subsistence allowance admissible under the Rules.

5. In both the applications, the respondents have filed their separate replies.

6. Dr. M.S.Nagaraja, learned Advocate has appeared for the applicant in both the cases. Sri M.Vasudeva Rao, learned Additional

Central Government Standing Counsel has appeared for the respondents in both the cases.

7. We will first deal with the claim of the applicant in Application No.1516 of 1988 and then with Application No.1769 of 1988.

8. Dr.Nagaraja contends that whatever be the result of Application No.1769 of 1988, the claim of the applicant for payment of enhanced subsistence allowance, fitting him in the revised pay scales applicable to the post as on 1-1-1986 and thereafter cannot be denied to him. In support of his contention Dr.Nagaraja strongly relies on a Division Bench ruling of this Tribunal rendered in H.A.KRISHNA MURTHY v. THE REGIONAL PROVIDENT FUND COMMISSIONER (Application No. 1008 of 1988 decided on 17-8-1988) (Annexure-A3 in Application No. 1516 of 1988).

9. Sri Rao contends that on a true construction of Rule 6 of the Central Civil Services (Revised Pay)Rules,1986 ('the Rules') the scope and ambit of which was not considered in Krishnamurthy's case, the applicant was not entitled for the benefit of the revision of the subsistence allowance till his suspension is revoked and taken back to duty and the applicant exercises his option within the time stipulated in Rule 6 of the Rules.

10. In Krishnamurthy's case, this Tribunal was dealing with a similar claim of an official who was working in the office of the Regional Provident Fund Commissioner, an office or organisation of Employees Provident Fund Organisation established and functioning under an Act called Employees Provident Fund Act,1952. On an examination of that claim we found that whenever there was revision in the pay scales, the benefit of such revision should also be extended for payment of subsistence allowance. In Krishnamurthy's case we have not specifically referred to Rule 6 of the Rules. But, on examining a similar claim in all its aspect and the instructions issued by Government of India,we have held that on the basis of the very instructions issued by Government reproduced at para 5 of the order, a person continuing under suspension on the date of general revision

of pay scales was entitled for the benefit of revision during the period of his suspension. Sri Rao is undoubtedly right that we have not specifically referred to Rule 6 of the Rules. But, the fact that we have not referred to Rule 6 of the Rules in Krishnamurthy's case would not have made any difference to the conclusion we have reached in that case.

11. We have carefully read Rule 6 of the Rules on which Sri Rao placed considerable reliance to defeat the claim of the applicant. We are of the view that that rule does not place any restriction on the right of the applicant to come over to the revised pay scales even before his suspension is revoked and claim the benefit of the revised pay scales for payment of higher subsistence allowance. On this view, we find no merit in the contention of Sri Rao and we reject the same. On the above discussion it follows that the claim of the applicant for revision of subsistence allowance if he exercises his option to come over to the revised scales of pay from 1-1-1986 has necessarily to be accepted. With this we now pass on to examine the claim of the applicant in Application No.1769 of 1988.

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