

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.991/1993

DATED: Thursday, this the 12th Day of October, 2000

Shri B.N.Yadav Applicant.

(Applicant Shri G.S.Walia, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri S.C.Dhawan, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No
- (3) Library. No

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

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.991/93

DATED: This Thursday, the 12th DAY OF OCTOBER 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

1. Shri B.N. Yadav,
Sr. District Store Keeper,
Central Railway,
Kurla, Mumbai

C/o Shri G.S. Walia
Advocate, High Court
16 Maharashtra Bhavan,
Bora Masjid Street,
Fort,
Bombay 400 001.

..... Applicant

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

Versus

1. The Union of India
through General Manager,
Central Railway
Mumbai V.T.
Mumbai 400 001.

2. Dy. Chief Engineer,
(Construction)
Central Railway, Dadar
Mumbai 400 028.

..... Respondents

(Respondents by Shri S.C. Dhawan, Advocate)

O R D E R

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

This is an Application made by Shri B. N. Yadav seeking the relief that it be held and declared that Applicant is entitled to 75% of the salary as subsistence allowance w.e.f 3.12.1992 with arrears and interest. Thus his grievance is that the normal subsistence allowance paid to him ~~should~~ be enhanced as per Rules. The point really for determination by the Tribunal

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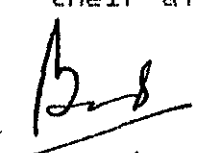
in this Application is as to whether the Applicant is entitled to such an enhancement in terms of the Rules in the facts and circumstances obtaining in his case.

2. The facts of the case are in a very short compass in that the Applicant was placed under suspension vide Order dated 2nd November, 1992 with effect from the same date (Ex.A). The Applicant had filed an O.A. (No.604/93) which was disposed of with a direction to complete the Enquiry within six months (page 9). The Applicant avers that he was issued with a Charge Sheet on 16.11.1992 but no Inquiry was conducted and he has not been paid the higher subsistence allowance due as per Rule 1342 of (I.R.E.C).

3. The Respondents have filed a Written Reply, resisting the claim of the Applicant, and taking the stand that the Applicant was not co-operating and hence the progress of the Inquiry was impeded. They have given certain dates in para 6 of the reply which will be discussed ahead. It is stated that the representation of the Applicant was considered and disposed of on 25.5.1993, and the request for enhancement of subsistence allowance thus came to be rejected.

4. A Rejoinder has been filed by the Applicant dated 1st October, 1993 (Page 27) where the chronology of progress of Inquiry has been given, and the point made against each to show how the Applicant was not responsible for not attending on some dates. It would be relevant to mention that a Miscellaneous Petition No.58/94 was filed (page 30) and this M.P. was allowed by the Tribunal vide Roznama Order 21.2.1994. Respondents were directed to answer interrogatories which they have done vide their affidavits dated 21st March, 1994 (Page 32).

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5. Besides going through the above important papers, we have heard Learned Counsel on both sides. The Counsel for the Applicant took us over all the facts, as reproduced above, and stated that it would be amply clear from a reading of the M.P. and reply, and other papers, that the Applicant was not responsible for delaying ^{Bench} the Inquiry proceedings. He referred to the Rules, as described by him in para 4.4, to press his claim and cited the case decided by this Bench of the Tribunal in O.A.No.198/99. He also cited the case decided by the Cuttack Bench of the Tribunal in O.A. No.606/94. Copies of both these Orders were provided.

6. The learned Counsel for the Respondents, Shri S.C.Dhawan, first took the point of *res judicata*, and said that the issue could not be reagitated in the present O.A., since the matter has been decided in O.A. 604/93 by this Tribunal on 2.8.1993 (Copy of Order at page 9).

7. The learned Counsel also referred to Para 9 of the Written Statement of Respondents, to state that representations made by the Applicant for increase in subsistence allowance have been decided from time to time. These orders are not challenged. (This was resisted by the Counsel for other side to the effect that no communication was made) It was argued that Applicant have given up his rights in view of his Application dated 25.1.1991 (page 10). No automatic enhancement was claimable as per rules. Learned Counsel cited the case decided in the matter of T.P.Kumaran and sought support of the ratio that Applicant was barred by the order 2 Rule II of CPC.

7A. Rearguing briefly on the point regarding *res judicata*, learned Counsel for Applicant resisted the argument that his case

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was hit by principles of *res judicata*, and contended that cause of action arose from day to day, and cited the case of *P.L. Shah (1989 SCC L&S 223)*.

8. Let us first settle the point regarding *res judicata*. We have seen the judgement in O.A. 604/93, filed not long after the suspension, and disposed of by this Bench of the Tribunal as per the following short order:

"It appears that after 25.1.1993 there was no progress with the inquiry. The applicant is under suspension. All that we need direct at this stage is that as far as possible the inquiry be completed within six months from the date of communication of this order to the respondents. The application is disposed of."

A reading of this order clearly shows that the matter has not been gone into on merits, and directions given only for early completion of the Enquiry. (Obviously, if the enquiry had been completed in time, the matter regarding the period of suspension could have been decided thereafter, thus obviating the need for the litigation before us.) It is clear, nevertheless, that the case of the Applicant is not hit by the principles of *res judicata*. In any case the examination of the need for enhancement of subsistence allowance or otherwise has to be made from time to time as per Rules, and hence cannot be hit by *res judicata* merely because of disposal of aforesaid O.A. in 1993.

9. Now, the Rule 1342 (F.R.53) of I.R.E.C. read as follows:

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"1342. (F.R. 53) Pay during Suspension:- (1) A railway Servant under suspension or deemed to have been placed under suspension by an order of the competent authority shall be entitled to the following payments, namely -

(a) A subsistence allowance at an amount equal to the leave salary which the Railway servant would have drawn if he had been on leave on half average pay or on half pay and in addition dearness allowance, if admissible, on the basis of such leave salary.

Provided that where the period of suspension exceeds 3 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first 3 months as follows:

(i) The amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the railway servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the railway servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above."

It is clear that subsistence allowance can be increased to the levels indicated, after expiry of three months, if the period of suspension is not prolonged due to causes attributable to the Govt. servant. The central and core point to be examined is whether any default or tendency to default existed on the part of the Applicant in the present case as described by the Respondent. We have, in this regard, to concentrate our attention to the facts pointed out by both sides and specially on para 3 of

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Rejoinder (page 28) and the points brought out in the affidavit of Respondents dated 21.3.1994 (page 32). It is clear from the latter statement of Respondents that no intimation of the next date was given on a day to day basis in respect of the relevant date/s cited where the Applicant is alleged to have not appeared for Inquiry. The intimation of next date was given by letters, subsequently. It is regrettable that only dates of despatch and receipt in the Office of the Dy. Chief Engineer etc. are mentioned. It is not clearly established, for instance, if the letter relating to the Enquiry date fixed on 16.4.1993 was received by the Applicant. It was clearly received in the Office of Dy. Chief Engineer 5 days after 16.4.1993. It is also admitted by Respondents that no intimation about the Enquiry date fixed on 24.6.1993 was sent to the Applicant. A reading of the aforesaid Affidavit of Respondents certainly makes it clear that the manner of intimation of dates was such that it would not be justifiable to come to a conclusion that there was wilful default on the part of the Applicant in not agreeing to attend the Inquiry proceedings. The contention of Applicant ^{BenB regarding the} lack of knowledge of some of the dates is plausible. Thus, it cannot be held that the cause to the delay of Inquiry was attributable to him.

10. We have carefully seen the judgement of this Bench in O.A. 198/99 cited on behalf of the Applicant and are in agreement with the reasoning cited. There is no other reason why enhancement of the subsistence allowance can be stopped as per Rules, apart from delay attributable to Applicant, and hence there is merit in the case of the Applicant. He thus deserves to be provided with the relief sought.

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11. The O.A. is, therefore, allowed with the Orders that the Respondents shall pay the subsistence allowance to the Applicant at the rate of 75% of the salary and allowances permissible (minus the subsistence allowance and allowances already paid). This increase shall be made from a date three months after the date of suspension i.e. w.e.f. 3.12.1992. No interest will be payable for these arrears. The enhanced amount will be paid till the date of revocation of suspension/date of decision of Enquiry as entitled under Rules. The payment as ordered above shall be made within a period of three months from the date of receipt a copy of this order. There will be no orders as to costs.

S.L. Jain
(S.L.Jain)

Member (J)

sj*

B.N. Bahadur
12-10-2000
(B.N.Bahadur)

Member (A)