

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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O.A. No. 1329/93

Smt. Varshaben R. Desai ..... Applicant

Vs.

The Regional Provident Funds  
Commissioner,  
Bhavishya Nidhi Bhavan,  
Bandra (East),  
BOMBAY.

Union of India, through  
The Ministry of Labour,  
Central Secretariat  
NEW DELHI - 1

..... Respondents.

CORAM : Hon'ble Shri M. R. Kolhatkar, Member. (A)

Appearance

Shri I. J. Naik, counsel  
for the Applicant

Shri R. K. Shetty, counsel  
for the Respondents.

ORAL JUDGMENT

Date : 24-2-94

¶ Per : Hon'ble Shri M. R. Kolhatkar, Member (A) ¶

In this case, the Applicant is a UDC under Respondent No. 1 and was placed under suspension on 23-2-1992. Inquiry officer was appointed on 18-6-1992 and the first hearing took place on 10-8-1992. Applicant applied on 18-6-1993 for payment of full subsistence allowance. However, on 16-2-1993, Respondent No. 1 passed an order (not on record) reducing the subsistence allowance by 25% against which Applicant represented on 5-8-1993.

2. By the impugned order/dated 23-8-1993 at 'Annexure A1' the disciplinary authority confirmed its earlier order dated 16-7-1993 reducing the subsistence allowance from 50% to 25% on the ground that the proceedings against her were getting delayed on account of reasons directly attributable to her. Final relief claimed by the applicant is to direct the respondents to pay to the applicant subsistence allowance at the enhanced rate of 75% alongwith arrears and interest.

The interim relief claimed is to direct Respondent No. 1 not to proceed further with the inquiry pending the enhancement.

3. It has been pointed out by the counsel for the applicant that in O.A. 795/93 Division Bench of this Tribunal by its order dated 29-1-1993 vide 'Annexure A-5' has quashed the appointment of the Inquiry Officer on the ground of likely prejudice. The Tribunal had also directed that the enquiry shall proceed de-novo following the service of the chargesheet. It is understood that an order appointing <sup>was</sup> ~~ment~~ the new Enquiry Officer is yet to be made.

4. The first contention of the Applicant <sup>is</sup> ~~is~~ that this order of the Tribunal clearly shows that the delay if any was not caused by the Applicant. Secondly, he argues relying on Kerala High Court Judgment in Shri N. Neelakanta Pillai Vs. Director of Postal Services, 1984 (1) S.L.J. 450 that Applicant was entitled to be afforded an opportunity to show cause against proposed reduction and since this was not done, the order reducing subsistence allowance was invalid.

5. The counsel for the respondents who was given time to file written statement but had not filed it <sup>on date</sup> ~~on~~ <sup>invested</sup> our attention to the recital in the order of D A that out of 23 total hearings held so far the applicant - delinquent had chosen to remain absent for more than 10 times on various occasions. According to him, the Applicant was responsible for the delay <sup>and</sup> reduction was fully justified, and the prayer for relief deserves to be rejected.

6. It is not for this court to determine or vary the rates of subsistence allowance. The rates are laid down by the F. Rs and the disciplinary authority is fully

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competent to vary the same after following the procedure laid down therein. In this case, without going in<sup>^</sup> to the question of whether the Applicant was afforded a reasonable opportunity to show cause against reduction in subsistence allowance or not, we are in<sup>a</sup> the position to dispose of the matter by considering the consequence of the order passed by this Tribunal in the O.A. 795/93 on 22-11-1993

It is clear that all the proceedings beyond service of chargesheet have been quashed. Therefore, any action purported to have been taken by the respondent No. 1 on the basis of alleged dilatory tactics of the applicant do not survive. The present position is that the chargesheet has been issued to the applicant and the Enquiry Officer is yet to be appointed. The question of the applicant having delayed the inquiry does not therefore arise. Under the circumstances, we ~~are~~, dispose of the application at the admission stage by passing the following order:-

#### O R D E R

Respondent's order dated 23-8-1993 is hereby quashed and set aside. It is declared that the applicant is entitled to subsistence allowance at the rate of 50% from the date of suspension, until the rate is varied i.e. either increased or decreased by the disciplinary authority<sup>in</sup> accordance with the rules. It is open to the applicant to make a representation to the respondents for increase in the subsistence allowance as per rules. We direct Respondents to pay arrears of the subsistence allowance, if any ~~are~~ to the applicant in view of the orders that have been passed by us within 4 weeks from the date of the receipt of this order. In the circumstance, we do not

think it fit to<sup>a</sup>ward any interest.

We hope that the Applicant would co-operative with the Departmental authorities in expeditiously completing the inquiry as per rules.

There will be no order as to costs.

Dasti.

*M. R. Kolhatkar*

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(M. R. Kolhatkar)  
Member (A)

Recd  
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