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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 55/93

~~Transfer Application No.~~  
~~XXXXXXXXXXXXXXXXXXXX~~

Date of decision 28.6.93

Shri M.Gopalan Petitioner

Shri S.P. Saxena Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri V.M. Bendre for Advocate for the Respondent(s)  
Shri P.M.Pradhan

Coram :

The Hon'ble Shri V.D.DESHMUKH, MEMBER(J)

The Hon'ble Shri

1. Whether the Reporters of local papers may be allowed to see the Judgement ?
  2. To be referred to the Reporter or not ?
  3. Whether their Lordships wish to see the fair copy of the Judgement ?
  4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } *See*

  
(V.D.DESHMUKH)  
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 55/93

Shri M. Gopalan

... Applicant.

V/s.

Union of India through  
the Secretary  
Ministry of Defence,  
DHQ, P.O.  
New Delhi.

The General Manager  
Ammunition Factory  
Kirkee,  
Pune.

... Respondents.

CORAM: Hon'ble Shri V.D. Dehsmukh, Member(J)

Appearance:

Shri S.P. Saxena, counsel  
for the applicant.

Shri V.M. Bendre, counsel  
for the respondents.

ORAL JUDGEMENT

DATED: 28.6.93

¶ Per Shri V.D. Deshmukh, Member(J) ¶

The application is admitted and taken for hearing. The respondents have filed their reply. I heard the counsels for the applicant and the respondents.

The applicant while in service with respondent No.2, The General Manager, Ammunition Factory, Kirkee, Pune was issued a memorandum of charges dated 17.12.1984 and was placed under suspension with effect from 19.11.1984. The enquiry was held and the Disciplinary Authority dismissed the applicant with effect from 6.6.1988. The appeal filed by the applicant was also rejected. The applicant thereafter filed original application No. 147/89 before this Tribunal and under the judgement dated 8.8.91 the order of dismissal was set aside, on the ground that the report of the Enquiry Officer was not furnished to the applicant and the applicant was directed to be reinstated.

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The respondents thereafter reinstated the applicant but placed him under suspension with effect from 6.6.88. Copy of the report of the Enquiry officer was furnished to him. The applicant submitted his representation to respondent No. 2 but <sup>again</sup> the dismissal order was passed on 17.11.92. The applicant preferred an appeal against this order which is stated to be still pending.

The recommendations of the IV th Pay Commission came to be applied with effect from 1.1.86 and it is the contention of the applicant that he should be paid the subsistence allowance as per the pay scale revised pursuant to the recommendations of the IV th Pay Commission. It is not in dispute that the applicant was paid the subsistence allowance during the period of suspension. However it was paid on pre-revised pay and allowances. In the circumstances the applicant claims that the respondents be directed to re-fix the basic pay and allowances of the applicant with effect from 1.1.86 on the basis of IVth Pay Commission recommendations and to calculate the subsistence allowance payable to the applicant for the period from 1.1.86 to 17.11.92 and to pay to the applicant the balance of the arrears.

This question is fully covered by two decisions of this Tribunal in Original application No. 676/87 decided on 23.2.88 and Original application No. 664/87 decided on 27.6.88, which are referred to and relied upon in the recent judgement in Original Application 1197/92, Shri P.N. Nikalje Vs. Director of Postal Services, Pune, decided on 22.1.93. It has been held in these cases that an employee even while under suspension would be deemed to be entitled to the revised pay scale if such a pay scale is accepted and offered to other employees who were not under suspension.

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The respondents rely upon proviso (ii) to rule 6(ii) in rules regarding the exercise of option contemplated by the recommendations of the IV th Pay Commission. The second proviso provides that where a government servant is under suspension on 1.1.86, the option may be exercised within 3 months from the date of his return to his duty if that date is later than the date prescribed in the sub rule. This is only an enabling provision permitting a government servant under suspension to exercise the option after the termination of suspension. It cannot be construed to mean that a government servant cannot be deemed to be entitled to revised pay scale as has been held under the aforesaid decisions of the Tribunal. It is just and reasonable that recommendations of the IV th Pay Commission which refixed the pay scales should be taken into consideration for all purposes and there cannot be any exception as regards the payment of subsistence allowance during the period of suspension. In this view of the matter it has to be held that the applicant's pay was liable to be revised with effect from 1.1.86 and he was entitled to subsistence allowance on the basis of revised pay scale with effect from the said date.

There is no controversy that the applicant has been paid subsistence allowance from 1.1.86 to 17.11.92 as per the pre-revised scale. The respondents are now directed to compute the subsistence allowance which was legally payable to the applicant from 1.1.86 to 17.11.92 on the footing that the pay stood refixed from 1.1.86.

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Computation shall be made within a period of three months from the date of receipt of this order. The amount already paid to the applicant towards subsistence allowance from 1.1.86 to 17.11.92 shall be deducted and the respondents shall pay the balance to the applicant within one month after the computation is completed.

There shall be no order as to costs.



(V.D.DESHMUKH)  
MEMBER (J)

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