

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Original Application No.976/94

Dated this \_\_\_\_\_ the 16<sup>th</sup> Day of Feb., 2000.

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

Shri Chandrashekhar Pande  
Residing at Plot No.317,  
Room No.2, Sion Trombay Road,  
Near Diamond Garden,  
Chembur, Bombay - 400 071.  
(By Advocate Shri K.R. Yelwe)

... Applicant.

Vs.

1. Union of India, through  
the Secretary, Ministry of  
Communications,  
New Delhi - 110 001.
2. General Manager (Central),  
Mahanagar Telephone Nigam Ltd.,  
Advani Chambers, August Kranti Marg,  
Bombay - 400 028.  
(By Advocate Shri V.S. Masurkar)

... Respondents.

O R D E R

{ Per : Shri B.N. Bahadur, Member (A) }

This is an application filed by Shri Chandrashekhar Pande seeking the reliefs from this Tribunal, in substance, for a direction to pay to the applicant subsistence allowance at leave salary of 3/4 pay from 27.10.1982 till 11.10.1993. Also for a direction for the payment of such allowance on the basis of revised pay scale with effect from 1.1.1986, alongwith all arrears.

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2. The grievance of the applicant is that he had been paid subsistence allowance only at the rate of 50% of the old salary scale whereas the revised salary scale of Rs.800-1150 should have been taken into account with effect from 1.1.1986. Thus the grievance of the applicant is in two parts :- (a) that the rate of his subsistence allowance should be increased from 50% of the salary to 75% with effect from October, 1992 i.e. from a date 6 months after date of suspension, and (b) that the subsistence allowance should be calculated on the revised pay scale after 1.1.1986.

3. The Respondents have filed a reply, where the background of the case has been given in regard to the first dismissal of the applicant, his approach to this Tribunal and developments beyond and upto the date of filing of the written statement (5.1.1994). Various annexures have been provided. We shall draw upon the written statement mainly upon the relief sought viz. regarding the subsistence allowance. In this regard the Respondents states that as per decision No.2 under FR 53 the official can be allowed to exercise option regarding revised pay scales only after his reinstatement. Respondents relies on

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Exhibit VII for the purpose. It is averred that because of this, revision of subsistence allowance was not considered.

4. The background of the grievance of applicant lies in the facts of his having been suspended on 27.3.1982, pending enquiry. He was dismissed after the enquiry on 13.12.1984. He approached to Tribunal which set aside his dismissal on 29.10.1991. Thereafter the applicant was reappointed to the post on 3.9.1992. These facts are brought out by the applicant in his application. Applicant contends that the period between the above dates of 29.10.1991 and 3.9.1992 have been ordered to be treated as deemed suspension. It was also decided to continue the Enquiry against him.

5. The applicant further goes on to describe in this application the grounds on which he bases his challenge, and the details of amounts paid to him and the contentions as to why he feels that the actions of the Respondents are illegal and discriminatory.

6. We have heard Learned Counsels on both sides. The Learned Counsel for the applicant argued his case in detail taking us over the facts of the case. It was argued that the enhancement of the subsistence allowance should have come as per rules from a date six months after his suspension. Thus, the enhancement

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should have come with effect from 27.9.1982 or say 1.10.1982. He cites FR 53 in his favour.

7. Counsel for applicant stated that the applicant was acquitted in criminal case and contended that he had infact in suspended because of the proceedings in the criminal case. Counsel for the applicant reiterated the points made in the application and also placed before us copies of copies of decisions of this Bench in OA No.414/87 and OA No.217/96 as also a copy of order issued by Respondents dated 11.10.1993 through which the applicant has been dismissed from service with immediate effect.

8. Counsel for the applicant relied on 3 Judgments as below:-

- (i) H.L. Mehra vs. Union of India 1974(2) SLR 187.
- (ii) Sambasiva Rao vs. Union of India 1993(23) ATC 592.
- (iii) Rohitashwa Kumar Vs. State of Rajasthan 1989(10)ATC 808.
- (iv) P. Xavier Vs. Chief Personnel Officer (1995)31 ATC 621.

Counsel took us over the cases cited and strenuously contented that these judgments covered the points urged in the present OA and could form the basis of provision of reliefs sought.

9. Arguing the case on behalf of the Respondents their Learned Counsel took us to Exhibit 6 of OA (letter dated 1.2.94) and stated that this explains why enhancement in the subsistence

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allowance was not sanctioned to the applicant (we shall revert to this document ahead). Counsel for Respondents further made the point in furtherance of this document that the charges against the applicant were serious and that increases in subsistence allowance were not automatic. Counsel for Respondents then referred to revised order of the MTNL, Mumbai dated 24.10.94 (Exhibit VIII) and made the point that it has been ordered here as to how the applicant will draw subsistence allowance with effect from 13.12.1984 i.e. an amount equal to the leave salary which would have drawn if he was on leave on half average pay.....

10. In regard to the grievance of the applicant regarding the non consideration of revised pay scale for determination of subsistence allowance with effect from 1.1.1986. The learned Counsel for Respondents rested his case on the written reply of Respondents (Para 5). and argued this point accordingly. No specific defence was made out in regard to the cases cited (Para 8 above).

11. As already stated, the questions in this case are clear

and can be posed as below:-

(a) Whether the claim for enhancement of subsistence allowance with effect from 27.9.1982 (or any other date) is justified.

(b) Whether the calculation of subsistence allowance from

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Ans

1.1.1986 should be made on the basis of the revised pay scales or on old pay scales.

12. We have carefully considered all papers in the case, the judgments cited, and the arguments made before us by the Learned Counsels on either side. The dates of the events that are relevant and important may be summarised as below in chronology

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|-----|----------|--------------------------------------|
| (A) | 27.3.82  | Applicant' suspended pending enquiry |
| (B) | 13.12.84 | Dismissed after enquiry              |
| (C) | 29.10.91 | Dismissal set aside by Tribunal      |
| (D) | 3.9.1992 | Applicant reappointed to post.       |
| (E) | 11.10.93 | Applicant finally dismissed.         |

Now, we find that through orders 22.9.1992 and orders dated 24.10.1994 (revised order) subsistence allowance has been sanctioned to the applicant with effect from 13.12.1984. In regard to the point relating to the enhancement we turn to the letter addressed to Shri Pande by Respondents where the representations regarding Claim for increase in the subsistence allowance has been examined. This is dated 1.2.1994 (Exhibit VI). It is stated that the charges against the applicant are of serious nature and that the delay in finalising the disciplinary case "is not entirely with the department as the enquiry report though handed over to you on 7.8.1992 and you are asked to give representation within one month, the same was received only on 31.12.1992". Now the first part about the seriousness of the

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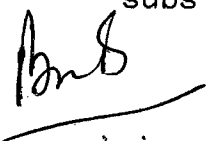
charge is irrelevant. In regard to the second the delay seems to be of the order of about three months. More importantly the delay relates to the year 1992. The question here is as to why such consideration was not made right from October, 1982 in the first place. We have carefully gone through the FRs filed (copy filed by Respondents and are left in no manner of doubt that a conscious decision has to be taken regarding non-allowing of increases. No such decision is on record, or pleaded. In this connection, the Government of India's decision on subsistence allowance, a copy of which has been provided by Respondents are seen. Relevant portions are extracted below:-

" It is obligatory under F.R. 53 that in sufficient time before the expiry of the first six (now three) months of suspension, the competent authority should review each case in which the period of suspension is likely to exceed six (now three) months, and even if it comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case, specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken. (G.I.,M.F.,O.M.No.F.15(16)-E.IV/58, dated the 16th February, 1959).

(f) Deemed suspension and law of limitation.-A Government servant, in whose case the order of suspension is deemed to have been continued in force or who is deemed to have been placed under suspension from the date of original order of dismissal/removal/compulsory retirement from service under Rule 10(3) or 10(4) of Central Services (Classification, Control and Appeal) Rules, he is to be paid subsistence and other allowances under F.R.53 with retrospective effect from the date of order of such dismissal/removal compulsory retirement.

It is not necessary to invoke the law of limitation while paying the arrears of subsistence and other allowances in such a case".

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13. It is thus clear from the above that it is incumbent upon the Government to consciously decide the issue relating to enhancement of subsistence allowance, and that specific orders are to be passed, placing on record the circumstances under which the decision had to be taken (OM of 16.2.1959 cited above). Under these circumstances, we would have no option but to decide that an increase in subsistence allowance by 25% i.e. (raising 50% to 75%) will have to be ordered from 6 months after date of suspension i.e. (say) with effect from 1.10.1982 at this stage, in the absence of anything to be contrary, ~~and~~ In view of the letter and spirit of government orders no other view is possible.

14. We now turn our attention to the second question posed by us (Para 12 above). In this regard we have seen the defence of the Respondents and carefully considered the judgments cited (para 8 above). <sup>B-8</sup> We find ~~above~~ that the judgments of this Tribunal cited at serial no.2,3 and 4 are totally relevant and applicable to the case before us. The issue before us has been dealt specifically, and in great detail, in these judgments and since we respectfully agree with them we do not find it necessary to repeat the reasons etc. We are convinced that relief will need to be provided to the applicant in this case on the same basis. We have consciously observed the fact in this case whereby the applicant was dismissed first on 13.12.1984 there is thus, as argued, a period when he was not in service, allegedly. But the fact that this Tribunal has quashed the order of dismissal places

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him under deemed suspension, thus there is no difference in his case as compared to the cases in the judgments cited, just because he had been once dismissed.

15. In view of the detailed discussions made above, we allow this OA in terms of the following orders:-

(a) The applicant is entitled to, and shall be paid subsistence allowance at the enhanced rate of 75% instead of 50%, with effect from 1.10.1982 till the date of his final dismissal i.e. 11.10.1993. Further, the basis of calculation of the subsistence allowance shall be revised with effect from 1.1.1986 on the basis of the Bomb revised pay scales that came into operation on that date. Needless to say, payments already made shall be adjusted as in normal course.

(b) The Respondents shall make all calculations and make the payment of the amount due to the applicant within a period of 3 months from the date of receipt of copy of this order. A gist of the calculation sheet shall be provided to the applicant, at that time.

(c) There will be no order as to costs.

S.L. Jain  
( S.L. Jain )  
Member (J)

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