

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 49/97

Date of Decision: 26-8-1997

A.Vasu

Applicant.

Ms.Nilima Gohad for Mr.S.P.Saxena

Advocate for
Applicant.

Versus

U.O.I. & Ors.

Respondent(s)

Mr.R.K.Shetty

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to X
other Benches of the Tribunal?

M.R.Kolhatkar

(M.R. KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 49/97

Tuesday , this the 26th day of August, 1997

CORAM:

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

A. Vasu,
Ex-UDC/AFK
16-A, Rajpath,
Kothrud,
Pune - 411 038.

By Advocate Ms. Nilima Gohad
for Mr. S.P. Saxena

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. The General Manager,
Ammunition Factory,
Kirkee, Pune - 411 003

By Counsel Shri R.K. Shetty

.. Respondents

The application having been heard on 26th August '97
the Tribunal on the same day delivered the following:

O R D E R

This O.A. has a long history of
litigation. The applicant was removed from
service w.e.f. 6-6-88 as a result of disciplinary
action, the charge being misappropriation of canteen
funds. The said penalty was moderated to that of
compulsory retirement from service by the appellate
authority. The said order of penalty was set aside
by the C.A.T. New Bombay Bench on 8-8-91 in O.A.

426/89 on the ground that a copy of enquiry report was not given to the applicant before taking a decision regarding penalty. The Tribunal however gave discretion to the Disciplinary Authority to revive the proceedings from the stage of service of enquiry report. Accordingly the applicant was placed under deemed suspension w.e.f. 6-6-88 by order dt. 14-11-1991 and disciplinary proceedings revived. The said order of deemed suspension was challenged by the applicant in O.A. 793/91 decided on 11-6-92. In this ^{OA} the Tribunal held that even for the application of sub-rule (4) it is necessary that delinquent Govt. servant should have been placed under suspension. Accordingly the order of deemed suspension was quashed by order dt. 8-10-92 and the applicant was allowed to join duty. In the SLP No.14996/94 the Hon'ble Supreme Court set aside the order of the Tribunal and upheld the validity of the order of the department placing him under deemed suspension. The Hon'ble Supreme Court allowed the appeal in view of the express language of the Rule.10(4) of CCA Rules.

2. On receipt of Supreme Court judgment the applicant represented for grant of enhanced subsistence allowance @ 75% instead of 50% in terms of FR 53 for the period from 6-6-88 to 8-10-92. To this the respondents sent a reply vide letter dt. 3-7-96 in which they stated that payment of subsistence allowance @ 75% is not mandatory

and thus rejected the request of the applicant for enhancement of subsistence allowance. It is this part of the communication which is being challenged by the applicant in this O.A. It would be thus seen that the issue for decision is within a narrow compass bearing on interpretation of FR 53. FR 53 reads as below :

"FR 53(1) A Government servant under suspension(or deemed to have been placed under suspension by an order of the appointing authority)shall be entitled to the following payments, namely :-

- (i) in the case of a Commissioned Officer of the Indian Medical Department of a Warrant Officer in Civil Employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;
- (ii) in the case of any other Government servant -
 - (a) a subsistence allowance at an amount equal to the leave salary which the Government 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 three 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 three 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 Government 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 Government servant;"

3. The contention of the counsel for the applicant is that review of subsistence allowance is mandatory in terms of=FR 53 if the applicant co-operates with the enquiry and the respondents cannot refuse to pay enhanced subsistence allowance without any **justified reason.**

4. Counsel for the respondent has urged following submissions in support of their stand. Firstly it is contended that the nature of the

charge against the applicant which resulted in imposition of penalty was very serious and therefore the question of any enhancement of subsistence allowance does not arise. This submission in my view cannot be accepted because it is not related to Rule FR 53. FR 53 provides that the subsistence allowance may be increased if, in the opinion of the competent authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Govt. servant.

5. The counsel for respondents would thereafter contend that since the orders of deemed suspension came to be issued in terms of rules ex-post facto therefore the question of periodical review as is contemplated in FR 53 does not arise and since there was no occasion for a periodical review there cannot also be any occasion for enhancement of the subsistence allowance. This contention of the counsel for respondents goes to the heart of the matter because the question involved here is essentially whether there could have been a deemed review in a situation of deemed suspension. It is well settled that when the authorities are directed to consider an imaginary state of affairs as if real, then the authorities must also imagine as real the consequences and incidents which, inevitably have flowed from the same. One must not permit his imagination to boggle when it comes to the inevitable corollaries of that state of affairs - per Lord Asquith in the case of

East End Dwellings Co.Ltd. v. Finsbury Borough Council (1952)AC 109(B) as quoted in M.Venugopal v. Divnl. Manager, LIC of India, AIR 1994 SC 1343. In this connection reference may also be made to the Govt. of India orders under FR 53. These orders envisage that review of subsistence allowance should be mandatory. Vide order dt. 23-8-1979 it is stated "It has been decided that a review of the subsistence allowance would be made at the end of three months from the date of suspension instead of the present practice of varying the subsistence allowance after 6 months. This would also give an opportunity to the concerned authority to review not merely the subsistence allowance but also the substantive question of suspension." In order (e) on the order of Retrospective revision it is stated that "Government do not consider it advisable that any orders revising the subsistence allowance should be given retrospective effect." But in order (f) under Deemed suspension and law of limitation, it is clearly mentioned that "A Govt. 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 Civil Services (Classification, Control and Appeal) Rules, he is to be paid subsistence and other allowances under FR 53 with retrospective effect from the date of order of such dismissal/ removal/compulsory retirement." What is stated

regarding payment of subsistence allowance also applies to the rate of subsistence allowance. In other words what the FR 53 envisages is that when there is a deemed suspension there should be a deemed review as a logical corollary and that deemed review should be actuated by valid reasons. The contention of the respondents that enhancement of subsistence allowance is entirely discretionary cannot, in the light of above discussion, be accepted. It would have been open to the respondents to refuse the enhanced subsistence allowance on the basis of a deemed review for valid reasons like failure of the applicant to co-operate with the enquiry. There are no such valid reasons. In the light of FR 53 and Govt. of India orders under FR 53, I am of the view that respondents were bound to undertake a deemed review of the subsistence allowance and they could not have denied the enhancement of the subsistence allowance except for valid reasons relatable to FR 53.

6. O.A. is therefore allowed and the respondents are directed to undertake a review of the deemed suspension and consider the case of the applicant for enhancement of subsistence allowance and pass speaking order in this regard and implement the same within three months from the date of communication of this order. In the facts and circumstances of the case, prayer for interest is disallowed.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)