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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,
HYDERABAD.

O.A.No. 308 of 1987.

Date of Decision: 28-12-89

Between:

P.Ramaiah.

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Petitioner.

Vs.

Superintendent of Post Offices,
Guntakal Division, Guntakal. Respondent.

Sri Thakakam, Counsel for the Petitioner.

Sri J.Ashok Kumar, learned standing counsel for the Respondent.

CORAM:

Hon'ble Sri B.N.Jayasimha, Vice-Chairman.

Hon'ble Sri J.Narasimhamurty, Member (Judicial).

Judgment of the Bench delivered by
Hon'ble Sri J.Narasimhamurty, Member
(Judicial).

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The Applicant filed this Application for quashing the Order No.F4/2/81-82 dated 9-3-1987 and for directing the respondent to enhance the subsistence allowance at the rate of 75% and pay the same as per the revised Pay Scales.

The facts of the case are:

The applicant while working as Postal Assistant in the Guntakal Head Office, he was placed under suspension with effect from 13--10--1981 as a criminal case was filed against him for misappropriation of Savings Accounts. By Order No.F4/2/81-81 dated 6-1-1982 the respondent ordered payment of subsistence allowance as per Rules. At the time of his suspension his Basic pay was Rs.284/- in the scale of Rs.260--8--300-EB-340-10-360-12-420-EB-12-480 and was given the subsistence allowance of Rs.317--60Paise.

He was paid the allowance from 13--10--1981 to 30-4-1982.

After the expiry of six months the applicant made an application for enhancement of the subsistence allowance as per proviso (i) to F.R.53(1)(a). The respondent issued orders dated 22--5--1982 enhancing the allowance by 10% with effect from 1--5--1982. Though the Rule says that the increase may be upto 50% of the subsistence allowance admissible the respondent only increased 10%. As the applicant was under suspension he received the same with simple protest.

The respondent without there being any reason, and authority issued a Memo No.F4/2/81-82 dated 24-3-1986 reducing the Subsistence Allowance by 10% with effect from 1--3--1986. The applicant is being paid the subsistence allowance at this decreased rate. The applicant got issued a legal notice dated 7..3..1987 to the respondent to pay the subsistence allowance as per the IV Pay Commission wherein the pay scale of the Central Government Employees are revised. The respondent sent a reply dated 9--3--1987 stating that the benefit of enhancement of the salary only after reinstatement vide Government of India's orders to 2(2) below F.R.53 which is being impugned in this application.

The recommendations of IV Pay Commission were given effect to from 1--1--1986. The scale applicable to the applicant is Rs.975--25-1150-EB-30-1660. As per the said scale the basic pay of the applicant would be Rs.1050/-. Even at the rate of 60% the applicant should get Rs.800/-. But he is being given only at the rate of Rs.577--40. As per the old scale the applicant is entitled to subsistence allowance at the rate of ~~Rxx~~ 75%. The difference would come to Rs.4712/-. According to the new scales the difference in payment from 1-1-1986 to 31-3-87 would come to Rs.5455/-. In total the applicant claims the difference of Rs.10,167/-.

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The respondent filed counter with the following contentions:

The petitioner was drawing Rs.284/- per month in the scale of Rs.260--380 on the date of suspension i.e., ¹³~~12~~--10--1981. His subsistence allowance was fixed at Rs.142/- per month plus usual allowances with effect from 13--10--1981.

Rule 53(1)(a)(i) of Fundamental Rules clearly indicate that the amount of subsistence allowance may be increased by a suitable amount not exceeding fifty percent of subsistence allowance admissible during the period of first 6 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. Accordingly the subsistence allowance was raised by 10% of the basic pay w.e.f. 1.5.82. Thus the subsistence allowance from 1-5-1982 was Rs.170.40 plus usual allowance. It is not correct to say that only 10% was raised in the subsistence allowance, whereas 10% of the basic pay was raised in the subsistence allowance with effect from 1-5-1982.

The second review of the case was made by the Superintendent of Post Offices, Guntakal Division on 28--2--1986. The Departmental inquiry under Rule 14 of CCS (CCA) Rules, 1965 was instituted by the Supdt. of Post Offices, Guntakal Division. The inquiry started on 6-5-1983 and was completed on 19--10--1983. The Government servant brought orders on 25-3-1985 from the Hon'ble A.P. High Court, Hyderabad under WPM# 3567/84 and stayed the Departmental Proceedings pending disposal of the criminal case C.C.No.5/83 before the Special Court for S.P.E., and

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A.C.B. Cases. Thus during the second review on 28-2-1986 the Superintendent of Post Offices, Guntakal observed that the case was pending on account of the Govt. servant only and passed orders in writing that the Subsistence allowance be decreased. Accordingly, Memo No.F4/2/81-82 reducing the subsistence allowance by 10% of the basic pay (equal to the amount which raised with effect from 1-5-1982) was ordered by the Supdt., of Post Offices, Guntakal. This was communicated under this Office Memo No.F4/2/81-82 dated 24-3-1986, since the Govt. Servant moved the Hon'ble High Court and got the orders issued that the Disciplinary Proceedings initiated by the Supdt. of Post Offices, Guntakal Division were stayed pending disposal of the Criminal Case in C.C.5/83 in the Special Court for SPE and ACB, Hyderabad, the period of suspension has been prolonged due to reason attributable to the Government Servant and reduction in the subsistence allowance with effect from 1--3--1986 is in order.

The applicant was kept under suspension on 13--10--1981. The benefit of Fourth Pay Commission takes effect from 1-1-1986. Thus this is a case in which the revised pay takes effect from dates falling within the period of suspension. The Govt. Servant is a permanent official having lien as Leave Reserve Postal Assistant Guntakal Division. Thus this case attracts the provisions contained in GMF O.M.No.F2(36)-EST III/58 dated 27-8-68 as incorporated under Govt. of India Order No.(2) 2(a) under F.R.53 of Swamy's Compilation of FR and SR which clearly states that the benefit of option will, practically, accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not. The claim of the Govt. Servant that the subsistence allowance should be paid under the revised rates of pay recommended

by the Fourth Pay Commission is not tenable. Since the Govt. Servant got the stay orders on 25--3--1985 from the Hon'ble A.P. High Court to stop the disciplinary proceedings initiated by the Superintendent of Post Offices, Guntakal till the criminal case pending disposal of the case CC5/83 in the Special Court for SPE and ACB cases the prolonged suspension is directly attributable to the Govt. servant only and the action taken in reducing the subsistence allowance by 10% of the basic pay with effect from 1-3-1986 is in order.

There is no refusal to give effect to the new scales contrary to FR 53 and also article 16 of the Constitution has not been contravened.

The Applicant has not made out a case and there are no merits in the application and it has to be dismissed.

We have heard Sri Tharakam, learned counsel for the applicant and Sri J. Ashok Kumar, learned standing counsel for the respondent.

On the above pleadings the following points arise for consideration:

- i) Whether the subsistence allowance could be reduced without giving notice to the Applicant?
- ii) Whether the applicant is entitled to the subsistence allowance as per the IV Pay Commission's recommended scales of pay?

✓ In this case, the respondent granted subsistence allowance to the petitioner from the date of his suspension and subsequently the petitioner filed a petition for enhancement of substance allowance. The respondent has sanctioned enhancement of subsistence allowance by 10 per cent. But

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subsequently the respondent has reduced the subsistence allowance by 10% with effect from 1--3--1986. The respondent tried to substantiate his contention that on account of the attitude of the petitioner the enquiry was prolonged. So they can reduce the subsistence allowance whenever they feel it necessary.

In the instant case, a Criminal Case is pending against the applicant. Departmental enquiry was also going on. In such a situation, it is natural for the applicant to ask for stay of the Departmental Proceedings pending disposal of the criminal case. The petitioner approached the High Court and got the stay orders of Departmental enquiry and this action of the applicant cannot be said that the applicant wantonly prolonging the litigation. Under law, he can ask the Court to stay the Departmental Enquiry pending disposal of the Criminal Case against him. By doing so, the petitioner cannot be ~~him~~ attributed that he is prolonging the litigation and on that score ^{They can say - it is not his fault} reduced the subsistence allowance. Before reducing the subsistence allowance, it is just and proper to give notice to the petitioner stating the grounds on which they are reducing the subsistence allowance. No such notice was given. Without informing the petitioner, the respondent arbitrarily reduced the subsistence allowance by 10 per cent.

As per the IV Pay Commission's Recommendations, the Government servants are entitled to get their revised pay scales from 1-1-1986 and the petitioner is entitled to claim the subsistence allowance according to the basic pay fixed in the new scale. The contention of the respondents

that the petitioner is not entitled to the subsistence allowance as per the revised pay scale is not correct. The claim of the petitioner as per the revised pay Scales is in order and he is entitled to the amount of Rs.10,167/- as claimed by him by way of subsistence allowance.

In the circumstances of the case, we quash the impugned Order F4/2/81-82 dated 9--3--1987 and direct the respondents to enhance the subsistence allowance at the rate of 75% and pay the same as per the revised pay scales upto date including the arrears. The respondents are directed to implement this order within two months from the date of receipt of this order.

In the result the Application is allowed.
No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chairman.

J. Narasimhamurthy
(J. NARASIMHAMURTY)
Member (Judicial)

Date: 28-12-89.

SSS.

J. Narasimhamurthy
DEPUTY REGISTRAR (J)
11.12.89

TO:

1. The Superintendent of post offices, Guntakal Divisions, Guntakal, Anantapur District.
2. One copy to Mr. B. Tharakam, Advocate, 1-10-24, Ashok Nagar, Hyderabad.
3. One copy to Mr. J. Ashok Kumar, SC for postal department, CAT, Hyderabad.
4. One spare copy.

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