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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.349 of 1990

DATE OF JUDGMENT: 12th February, 1992.

BETWEEN:

Mr. U.Ganga Raju

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Applicant

AND

1. The Divisional Railway Manager,
South Central Railway,
Vijayawada.

2. The Divisional Railway Manager,
S.C. Railway,
Hubli.

3. The General Manager,
S.C. Railway,
Secunderabad.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. G.V. Subba Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.R. Devaraj,
SC for Railways.

CORAM:

Hon'ble Shri T. Chandrasekhara Reddy, Member (Judl.)

contd....

T. C. R.

JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

21/4-27/4/88 ?
This is an application filed by the applicant
under Section 19 of the Administrative Tribunals Act
herein/to direct the respondents to grant the following
reliefs:-

- a) to draw increments as due on the date
of annual increment during the period
of suspension from 27.4.1985 to
31.12.1985 in the old scale and pay
arrears of difference of subsistence
allowance between as paid and as due;
- b) to fix his pay with effect from 1.1.1986
in RSRP consequent on the implementation
of IV Pay Commission scales and regulate
his increments from time to time and pay
the arrears of subsistence allowance till
the date of reinstatement i.e., 6-4-1988 ;
and
- c) to pay the applicant the arrears of salary
and allowances consequent on fixation of
pay in RSRP scale with effect from 7.4.1988
with all consequential benefits.

2. The facts giving rise to this application in brief
are as follows:-

The applicant herein was working as Guard 'C'
of Goods/Passenger trains. The applicant was suspected
as having committed an offence under Section 3 of the

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3. Counter is filed by the respondents opposing the said application.

4. Shri G.V. Subba Rao, learned counsel for the applicant and Shri N.R. Devaraj, learned Standing Counsel for the respondents, are heard. As already pointed out, the case of the applicant^{is} that he is entitled for sanction of increments during the suspension period from 27.4.1985 to 6.4.1988.

5. The employer has always a right to suspend his employee in the sense of not taking any work from him. But the employer has no right to deprive him of his full pay etc., unless service rules so permit. An order of suspension of a Government^{servant} does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. As laid down in AIR 1963 SC 687 (Khem Chand Vs. Union of India), the real effect of an order of suspension is that though the Government servant continues to be a member of the service he is not permitted to work. However, during the period of his suspension, he is paid only subsistence allowance which is less than his salary instead of pay and allowances he would have been entitled ~~am~~ if he had not been suspended.

Act and was arrested on 27.4.1985 and was produced before the ~~Judicial~~ Special Judicial I Class Magistrate for Railways, Vijayawada. The applicant was released on bail on 1.5.1985. After the applicant was released on bail, the applicant was placed under deemed suspension with effect from 27.4.1985 which as already pointed out was his date of arrest. As the applicant continued to be under suspension, he filed OA 151/87 on the file of this Tribunal challenging the suspension order. This Tribunal by its order dated 23.2.1988 ordered the respondents to revoke the suspension order that was passed against the applicant. The applicant was put back to duty with effect from 7.4.1988. During the period of suspension, the applicant was not granted his increments nor his pay had been fixed with effect from 1.1.1986. It is the case of the applicant that for the purpose of subsistence allowance during the suspension period that the respondents are liable to sanction increments to the applicant when the said increments became due and to pay arrears of difference of subsistence allowance after deducting subsistence allowance that was paid during the suspension period after ~~sanction~~ the sanction of the said increments. ~~*****~~

It is also his case that his pay has not been fixed with effect from 1.1.1986 in the revised scales on the implementation of the recommendations of the 4th Pay Commission and regular increments/accordingly and hence the present applica-^{tion} for the reliefs as already indicated above.

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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 (suspension) exceeds three months XXXX
XXXX XXXX XXXX XXXX XXXX"

The provisions of FR 26 prescribe the conditions on which service counts for increments in a time scale. The fact that the Railway servants are also governed by the same principle is not in dispute. In the Swamy's Compilation of F.R.S.R., Part-I General Rules of the 1987 edition at page 139, with regard to a point of doubt, "how the increment will be regulated if the employee happens to be on leave on the first of the month and increment falls due", it has been clarified that an employee during the leave draws leave salary and not duty pay. An increment accruing during leave cannot, therefore, be drawn during leave. The increment in such cases will be drawn from the date of resumption of duty on return from leave. So, from the said clarification under FR 26, it becomes amply evident that even when an employee is on Half Pay Leave, during the leave period he earns increment due to him. But, of-course, when the Government

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6. Service rules general~~/~~provide for the payment of subsistence allowance for a Government servant placed under suspension ~~and~~ during the period of suspension. The subsistence allowance is some times provided from the rules themselves which is fixed by the Government instructions and Fundamental Rules. It may be pointed out, no such specific provision in respect of subsistence allowance is made in the Central Civil Services (Classification, Control & Appeal) Rules, 1965 or in the Railway Servants (Discipline & Appeal) Rules, 1968. ^{and the railway servants} The Government servants covered by these rules are entitled to subsistence allowance under Fundamental Rule 53 and Rule 2043-RII respectively. What applies to a Government servant under FR 53 also equally applies to a Railway servant under the above said rule. FR 53 so far to the extent for the disposal of this OA may be extracted:-

"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) xxxx xxxx xxxx xxxx xxxx

(ii) in the case of any other Government servant-

(a) a subsistence allowance at an amount equal to the leave salary which the

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suspension as a penalty. The question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection."

In Nazmul Hasan Vs. Senior Superintendent, RMS, Gorakhpur and others (1986 ATC (CAT) 537, the Central Administrative Tribunal of Allahabad Bench has summed up the position thus:

"suspension is defined as a state of being debarred. An employee when he is suspended is thus debarred from any privilege, from the execution of an office or from the enjoyment of an income. It is a temporary deprivation of office but by reason of suspension the person suspended does not lose his office nor does he suffer any degradation. He only ceases to exercise the powers and to discharge the duties for the time being. He cannot draw his salary but he gets his suspension allowance and he is also subjected to the same disciplinary action and penalties as any other employee. It only means a temporary deprivation of office.

servant is on Half Pay Leave, he will not be entitled to the monthly benefits of the said increments earned by him during the leave period but his pay is liable to be fixed after return from the leave on the basis of the increment/increments he has earned during the period of Half Pay Leave. But here we are not concerned with the question of a Government servant who had gone on Half Pay Leave. But the question is, in view of the suspension orders passed against the applicant in view of P.R. 53(1)(ii), (equivalent to Rule 2043-RII of the Railway Establishment Manual), what is the subsistence allowance that is to be paid to the applicant. In Balvantrao Katilal Patel Vs. State of Maharashtra, (AIR 1968 SC 800), the Supreme Court has held as follows:-

"On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one or two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be

T. C. [Signature]

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in this case, there is no order by the respondents withholding sanction of increment/increments to the applicant during the suspension period. That being the position, it would be fit and proper to direct the respondents to sanction the increments that became due and payable to the applicant during the period of his suspension and calculate the subsistence allowance that is to be paid to the applicant accordingly and to pay the difference of the subsistence allowance to the applicant for the suspension period. ^{after deducting the subsistence allowance already paid} In this context, it will be worthy to note a decision of the Allahabad High Court reported in 1971(2) SLR 523 (Mritunjai Singh Vs. State of U.P. and others) wherein it is held that, when a Government employee was under suspension and as the contract of the service of the employee continues though he was under suspension, increment should be allowed ordinarily to be drawn unless it is withheld. In the said case of Allahabad High Court, as the increment was not withheld, the Allahabad High Court held that the said Government servant was entitled to the increment during the pendency of the suspension and that the subsistence allowance had to be calculated accordingly.

8. The applicant has asked to pay the arrears of salary and allowances consequent on fixation of his pay in the RSRP scale with effect from 7.4.1988 with

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Suspension is something less than termination, and therefore a connection continues between the master and the servant. The servant cannot seek employment elsewhere though he does not perform his normal duties for the master. Similarly, the master is obliged to give a subsistence allowance to the servant though he may not be obliged to pay him full wages. The suspended employee cannot be asked to render any service or perform any duty."

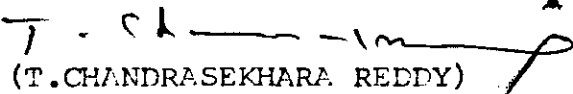
7. As could be seen from the above decisions, the real effect of an order of suspension is that, though the Government servant continues to be a member of the service, he is not permitted to work and is paid only the subsistence allowance which is less than his salary. So, that being the position and in view of the F.R. 53 extracted above and the clarification referred to under FR 26 at page 139 of the Swamy's Compilation of F.R.S.R., in my opinion, it would be fit and proper to the employer to sanction increment due to its servant during suspension period purely for the purpose of calculating subsistence allowance and a payment of the subsidence allowance unless the increment that falls due during the suspension period is withheld by an order of a competent authority (emphasis supplied). Admittedly,

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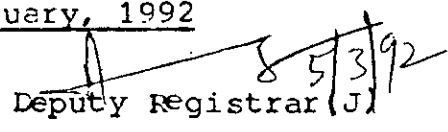
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for the suspension period. The claim of the applicant for the arrears of the salary and allowances consequent on fixation of his pay in RSRP scale with effect from 7.4.1988 with all consequential benefits is hereby refused. The O.A. is allowed accordingly. In the circumstances of the case, we make no order as to costs.


(T.CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 12 February, 1992


Deputy Registrar (J)

To

- 1..The Divisional Railway Manager,
S.C.Rly, Vijayawada.
2. The Divisional Railway Manager, S.C.Fly, Hubli.
3. The General Manager, S.C.Rly, Secunderabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One copy to Mr. T.Chandrasekhar Reddy, Hon'ble Member(J)CAT.Hyd.
7. One copy to D.R. (J) CAT.Hyd.
8. Copy to All reporters as per standard list of CAT.Hyd.
9. One spare copy.

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all consequential benefits. We have made it clear that purely for the payment of subsistence allowance only, during the suspension period, that we have directed the respondents to sanction increments to the applicant. What should be the pay and allowances that are to be paid to the applicant during the suspension period depends purely on the final outcome of the proceedings in the departmental enquiry. F.R.54-B which is same as Rule 2044-B of the Railway Establishment Manual, which states "when a Government servant who has been suspended is reinstated, the authority competent to order reinstatement shall make a specific order regarding pay and allowances to be made to the Government servant for the suspension period. So whether the suspension period has got to be treated as duty period or a period of "dies non" is all left to the appointing authority and a decision with regard to pay and allowances for the suspension period has got to be taken by the appointing authority while passing final orders in the departmental enquiry. So, in view of this position, the applicant is not entitled to the relief for the arrears of pay and allowances consequent on fixation of pay in RSRP scale with effect from 7.4.1988 and hence, this relief is liable to be rejected.

9. In the result, the respondents are hereby directed to sanction the increments that became due to the applicant from 27.4.1985 to 6.4.1988 which is the suspension period and on the said basis to calculate the subsistence allowance that is to be paid to the applicant and to pay the arrears of subsistence allowances after deducting the subsistence allowance that had already been paid to the applicant

T. C. R.