

(37)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.796/1991

Date of decision: 6-2-1992.

Between

Y.V. Atchuta Rao

... APPLICANT

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1. Union of India, rep. by the Secretary, Min. of Defence.
2. Engineer-in-Chief, Army Hqrs., New Delhi.
3. Chief Engineer, Hqrs., Southern Command, Pune.
4. Director General (Naval Project), Visakhapatnam.

... RESPONDENTS

Appearance:

For the applicant

: Sri V. Venkateswara Rao, Advocate

For the Respondents

: Sri N.V. Ramana, Addl. CGSC

CORAM:

The Hon'ble Shri C.J.Roy, Member (Judicial)

JUDGMENT

(delivered by the Hon'ble Sri C.J.Roy, Member (Judicial))

The applicant has filed this Application under Section 19 of the Administrative Tribunals Act seeking a direction to the Respondents, Union of India and others, to pay him subsistence allowance at the rate of 75 per cent of his pay plus D.A., w.e.f. 22-6-1986 to 8-6-1990; full pay and allowances thereafter by declaring the letter No.DG/1209/YVA/GP-4/512/E1 dated 3-9-1990 of the Fourth Respondent herein, as illegal, arbitrary and unconstitutional and for

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consequential benefits like arrears of subsistence allowance and pay and allowances and all other attendant benefits.

2. The applicant who was working as Store-keeper Grade-II in the office of the Director General (Naval Project), Visakhapatnam, the fourth Respondent herein, was placed under suspension w.e.f. 21-3-1986 and disciplinary proceedings were initiated against him on charges of misappropriation, etc. He was sanctioned and paid subsistence allowance w.e.f. 21-3-1986 at the rate of 50 per of his pay plus D.A. The disciplinary charges culminated into his dismissal from service vide orders of the 4th Respondent dated 11-6-88. The penalty imposed was also confirmed in appeal by the appellate authority vide orders dt. 30-1-1989. The applicant filed O.A.No.578/89 before this Tribunal challenging his dismissal orders. A Division Bench of this Tribunal vide its orders dated 25-4-90 set aside the punishment order on the technical ground that he was not supplied with a copy of the Enquiry Officer's report before passing the punishment order and remanded the case back to the 4th Respondent, on the analogy set out in Premnath K. Sharma's case. The 4th Respondent vide his orders dated 18-6-1990 permitted the applicant to resume duty with retrospective effect from 8-6-1990 but at the same time, by the same proceedings placed him under deemed suspension on his resumption of duties. It was also stated therein that the intervening period from the date of dismissal till the date of reinstatement would be regularised after completion of fresh proceedings. The 4th Respondent, vide separate

proceedings dated 18-6-1990 bearing No.DG/1209/YVA/GP-4/487/E1 continued the disciplinary proceedings by supplying a copy of the Enquiry Officer's report and calling upon the applicant to make a representation or submission on the same if he wishes to do so. All through the applicant was paid subsistence allowance at 50 per cent of his pay plus D.A. The applicant filed another O.A.No.604/90 before this Tribunal seeking declaration from this Tribunal that proceedings No.DG/1209/YVA/GP-4/487/E1 dated 18-6-90 issued by the fourth Respondent continuing the disciplinary proceedings, as illegal, arbitrary and unconstitutional and to direct the Respondents to pay him arrears of pay and allowances and all other attendant benefits as per rules and for consequential benefits such as seniority, promotion, arrears of salary and allowances, etc. By way of interim orders, the applicant sought for stay of all further proceedings pursuant to the impugned proceedings dated 18-6-1990 and also for arrears of subsistence allowance due to him as per rules for the period from 11-6-1988 to 8-6-1990. The latter interim relief was, however, withdrawn on 27-7-1990 by the applicant at the insistence of the Tribunal since it was a separate relief not connected to the case in O.A. 604/90. The counsel for the applicant, on his request, was permitted to file a separate Application, in this connection. The O.A. was finally disposed of by this Tribunal vide judgment dated 23-8-1991 holding the impugned orders dated 18-6-90 continuing the disciplinary proceedings as valid. It was also directed



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therein that the applicant should be paid subsistence allowance as per the rules within one month from the date of receipt of the judgment.

3. After the O.A. No.604/90 was admitted on 27-7-1990 at which time the applicant was permitted by this Tribunal to file a separate application for subsistence allowance for the period from 11-6-1988 to 8-6-1990 i.e. the date of his dismissal and the date of reinstatement, respectively, the applicant made a representation to the fourth Respondent on 16-8-1990 seeking subsistence allowance at 75 per cent of his pay plus D.A. w.e.f. 22-6-1986 instead of at 50 per cent of his pay being paid to him and for release of increments on due dates during the suspension period and also for payment of bonus. The 4th Respondent vide his letter dated 3-9-1990 rejected the claim of the applicant for 75 per cent of his pay as subsistence allowance w.e.f. 22-6-1986. It was also stated therein that the applicant was paid subsistence allowance continuously at the rate of 50 per cent as per the decision taken by the authority in the periodical review. With regard to the claim of the applicant for release of increments on due dates during the suspension period and for bonus, the same are admissible only on revocation of suspension and based on the order passed regarding regularisation of period under suspension. Questioning the same, the applicant has filed the present O.A. seeking relief of payment of 75 per cent of his basic plus D.A. as subsistence allowance for the period from 22-6-1986 to 8-6-1990 and thereafter full pay and allowances attached to the post held by him and for arrears thereof.

4. The Respondents have filed a counter opposing the claim of the applicant. It was stated therein that the suspension had been prolonged as the applicant had filed applications before this Tribunal, hence the delay was attributable to the applicant and not to the Department and that the competent authority on periodical review had decided to continue to pay the subsistence allowance at the rate of 50 per cent of the salary and was accordingly paid subsistence allowance from 22-6-1986 onwards at the rate of 50 per cent of his pay.

5. I heard the arguments of the learned counsel for the applicant Shri K. Phani Raju for Shri V. Venkateswara Rao and Shri Rajeswar Rao, Advocate for Shri N.V. Ramana, learned Addl. CGSC on behalf of the Respondents. During arguments, the learned Standing Counsel for the Respondents raised the issue of limitation on the claim of the applicant.

6. The applicant had sought relief of subsistence allowance at 75% of his pay from 22-6-1986 as also full pay and allowances from 9-6-1990 onwards. The applicant had sought similar relief as that of the latter part of the relief in this O.A., in his earlier O.A. No. 604/90 and while disposing of the said O.A. this Tribunal has rejected the claim of the applicant for full pay and allowances from 9-6-1990 by upholding the impugned order therein. The applicant cannot raise the same issue again in this O.A. by magic of words. We accordingly reject the plea of the applicant for full pay and allowances from 9-6-1990 onwards as it was already the subject matter of O.A. No. 604/90.

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7. With regard to the claim of the applicant for subsistence allowance at 75% of his pay plus D.A. after completion of three months of initial suspension period, i.e. from 22-6-1986, provisions of F.R. 53(1)(ii)(a) permit the competent authority to vary the amount of subsistence allowance for any period subsequent to the period of first three months as follows:

- (i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% 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;
- (iii) the rate of dearness allowance will be based on the increased or as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

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The Government of India orders on the subject, viz. Govt. of India, Min. of Home Affairs, Dept. of Personnel and Admn. Reforms OM No.16012/1/79-LU dated 23-8-1979 and OM No.F.15(16)-E.IV/58 dt. 16-2-59 clearly state that such first review of subsistence allowance should be made at the end of the three months from the date of suspension instead of the present practice of varying the subsistence allowance after six months (the then stipulated period for revision of subsistence allowance which has now been reduced to three months) and that it is obligatory under FR-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. During arguments when it was specifically asked, whether any such review was undertaken by the competent authority, the learned standing counsel for the Respondents could not produce any record to that effect but vaguely stated that the behaviour of the applicant itself in approaching this Tribunal by filing O.As., etc. can be inferred that the applicant himself is responsible for prolonged suspension as such he is not entitled for enhancement of subsistence allowance. It means to say that admittedly there was no such review undertaken by the competent authority before 22-6-1986.

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It cannot be said that approaching this Tribunal for reliefs is a misbehaviour or causing delay on the part of the delinquent warranting any inference of his conduct responsible for prolonged suspension. In any case, filing of O.A.s. before this Tribunal are all much later than 22-6-1986. In the circumstances, I hold that the applicant is entitled to enhanced subsistence allowance at the rate of 75 per cent of his pay plus D.A. w.e.f. 22-6-1986. With regards to the payment of arrears thereof, admittedly there is considerable delay in claiming this relief. Admittedly the applicant has never made any representation to the competent authority for enhancement of his subsistence allowance nor made it any issue to that effect in his O.A. 604/90. For the first time he made a representation to the 4th Respondent on 16-8-1990 seeking enhanced subsistence allowance w.e.f. 22-6-1986 under the garb of this Tribunal order dated 27-7-1990 in O.A. 604/90 permitting him to file a separate application before the Tribunal for the relief of subsistence allowance from the date of his termination till the date of reinstatement, thus managing a reply from the Respondents to overcome the limitation in making a claim before this Tribunal. Incidentally, the applicant has waited for full eleven months in filing the present O.A. after the receipt of reply dated 3-9-1990 from the Respondents in this regard. Further though his counsel stated before this Tribunal on 27-7-1990 i.e. at the time of admission

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of O.A.No.604/90 that he would file a separate application with regard to subsistence allowance, though it was for a part of the suspension period, the applicant rather preferred a representation before the authorities rather than straightaway approaching this Tribunal as was permitted by this Tribunal in O.A.No.604/90 ostensibly to get over the limitation clause under Administrative Tribunals Act, since the said permission granted in O.A.No.604/90 pertained only to the period from the date of dismissal to the date of reinstatement viz. from 11-6-1988 to 8-6-1990. In the circumstances, I hold that the applicant's claim for arrears of enhanced subsistence allowance from 22-6-1986 is hit by limitation under A.T. Act. However, this Tribunal in O.A.No.604/90 directed the Respondents to pay the applicant subsistence allowance in accordance with the rules, hence I restrict the claim of the applicant for arrears of enhanced subsistence allowance from the date of filing of the said O.A. viz. 20-7-1990.

8. Though the applicant has mentioned in the body of the present O.A. for release of increments falling due during suspension period and for bonus, since he has not made any specific prayer to that effect, the merits and de-merits of the same are not gone into.

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9. In the circumstances, the O.A. is disposed of with the direction that the applicant be paid subsistence allowance at 75 per cent of his basic pay plus D.A. thereon, w.e.f. 20-7-1990. There will be no order as to costs.

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(C.J.Roy)
Member (Juld.II).

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Dated: 1st day of February, 1992.

8/2/92
Deputy Registrar (Juld.)

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Copy to :-

1. Secretary, Ministry of Defence, Union of India, Union of India, New Delhi-110001.
2. Engineer-in-Chief, Army Hqrs., New Delhi.
3. Chief Engineer, Hqrs., Southern Command, Pune.
4. Director General (Naval Project), Visakhapatnam.
5. One copy to Sri. V. Venkateswara Rao, advocate, CAT, Hyd-bad.
6. One copy to Shri. N.V. Ramana, Addl. CGSC, CAT, Hyd-bad.
7. One spare copy.

Rsm/-

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TYPED BY
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COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

THE HON'BLE MR.R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR.T. CHANDRASEKHAR REDDY :
M(JUDL)

AND

THE HON'BLE MR.C.J. ROY : MEMBER(JUDL)

DATED: 6.2.1992 ✓

ORDER/JUDGMENT: ✓

R.A/C.A/ M.A.N.

in

C.A.N.

796/91 ✓

T.A.No.

N.D.No. ✓

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

