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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

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O.A. 85/92

Dt. of Decision : 24.3.1994.

M. Sudhakar Babu

.. Applicant.

Vs

1. Assistant Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Mylapore, Madras-4,
Tamil Nadu.

2. Deputy Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Mylapore, Madras-4,
Tamil Nadu.

.. Respondents.

Counsel for the Applicant : Mr. Y. Narasimha Reddy

Counsel for the Respondents : Mr. N. R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY : MEMBER (JUDL.)

THE HON'BLE SHRI H. RAJENDRA PRASAD : MEMBER (ADMN.)

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ORDER

(As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J))

This is an application filed under Section 19 of the Administrative Tribunals Act to set aside the order dated 12.12.90, keeping the applicant under deemed suspension and to direct the respondents to pay the applicant pay and allowances for the deemed suspension period and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief, are as follows:-

3. The applicant, while working as Assistant at Central Intelligence Officer, Gr.II (General) / Nellore, a departmental enquiry was initiated against him on the ground that the applicant wilfully disobeyed the written orders of transfer from Nellore to Port Blair of the Compete Authority and thereby violated Rule 3(i)(iii) of the CCS (Conduct) Rules, 1964. A regular enquiry was conducted. The applicant was removed from service w.e.f. 11.1.85 as the charge against him was held proved by the disciplinary authority. Challenging the removal order dated 11.11.85, the applicant filed a writ petition No.566/85 in the Hon'ble High Court of AP. After constitution of this Tribunal, WP No.566/85 was transferred from the Hon'ble High Court of AP to this Tribunal and writ petition No.566/85 was numbered as TA 847/86 on the file of this Tribunal. After hearing both the sides, this Tribunal allowed the TA 847/86 on technical grounds as per its Judgement dated 23.8.90 giving liberty to the respondents to continue the enquiry

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from the point where illegality had been committed. The competent authority decided to continue the enquiry from the point where the illegality had been committed. So, the competent authority in view of the directions given in TA 847/86 (judgement dated 23.8.90) ordered that a further enquiry should be held from the stage of Rule 14(18) of CCS(CCA) Rules, 1965 and in accordance with the provisions of CCS(CCA)Rules, 1965 against the applicant and further directed that the applicant could be kept under deemed suspension w.e.f. 11.1.85. The said order was passed by the competent authority on 12.12.90. The said deemed suspension order is questioned by the applicant in this OA and the OA is filed for the reliefs as already indicated above.

4. Counter is filed by the respondents opposing this OA.

5. We have heard in detail Mr Y.Narasimha Reddy counsel for the applicant and Mr NR Devraj, Standing Counsel for the respondents.

6. Admittedly, the applicant had been removed from service w.e.f. 11.1.85 in view of the orders of the competent authority. The said removal order had been set aside in TA 847/86 as per orders dated 23.8.90. So, in view of the directions given in TA 847/86 in Judgement dated 23.8.90 as already indicated, the applicant had been kept under deemed suspension w.e.f. 11.1.85. In *Khem Chand Vs Union of India AIR 1963 SC 687*, the Hon'ble Supreme Court upheld the validity of a rule providing for deemed suspension on the removal order being set aside by a court and the disciplinary authority deciding to hold further enquiry. As per the specific orders dated 12.12.90 the applicant had been kept under deemed suspension. CCS(CCA)Rules, specifically provide that a government

servant shall be deemed to have been placed under suspension when an order of dismissal or removal or compulsory retirement is set aside by a court and the disciplinary authority decides to hold further enquiry. (See Rule No.10 (2) to (5) of CCS(CCA)Rules,1965. As the orders of removal of the applicant dated 11.1.85 were set aside by ~~this~~ this Tribunal, the deemed suspension had come into force when the enquiry was ordered to be continued on the same allegations on which the penalty was originally imposed. So, the deemed suspension order dated 12.12.90 passed in this case is legal and valid.

6. It is the contention of the applicant as the removal order dated 11.1.85 had been set aside, that he is entitled to be paid pay and allowances in accordance with rules and regulations from 11.1.85 onwards upto 23.8.90. Admittedly, further enquiry as against the applicant was continued in view of the judgement dated 23.8.90 in TA 847/86. The payment of pay and allowances to the applicant would ultimately depend upon the final result of the enquiry. As could be seen from the counter for the respondents, the applicant had been removed from service for a second time after further enquiry. It is needless to point out that deemed suspension orders dated 12.12.90 got merged in the removal order that had been passed as against the applicant after further enquiry. So, as the applicant has since been removed from service, it is not open for the applicant to claim pay and allowances for the deemed suspension period and hence, the contention of the applicant for pay and allowances for the deemed suspension period is liable to be rejected and is accordingly rejected. Hence, the OA is liable to be dismissed, with regard to the prayer for pay and allowance for the deemed suspension perio

7. The grievance of the applicant is also that he had not been paid subsistence allowance for the deemed suspension period and for the period, the enquiry was continued subsequent to the judgement dated 23.8.90 in TA 847/86.

8. The applicant had earlier filed OANo.862/91 for a direction to the respondents to pay subsistence allowance in pursuance of the order dated 12.12.90. After hearing both sides, OA 862/91 had been disposed of by this Tribunal as per order dated 24.9.91, directing the respondents to examine the whole question of subsistence allowance and pass suitable orders within one month of receipt of ~~the~~ the order in OA 862/91 taking into account all the facts available and in accordance with the rules.

9. The learned Standing counsel for the respondent Mr NR Devraj, took us through the counter filed by the respondents. In para 5 of the counter, it had been specifically pleaded that the applicant was employed with M/s HAL, Bangalore from 9.3.87 to 25.7.89 and that the applicant was again employed with M/s Hyderabad Allwyn Ltd., Nandalur from 31.7.89 to 25.7.90. It is pleaded in para 6 of the counter a sum of Rs.24,652/- on account of arrears of subsistence allowance for the period from 11.1.85 to 8.3.87 and from 26.7.89 to 30.7.89 was drawn and paid to the applicant. Further, it is pleaded in the same para (6) of the counter that subsistence allowance for the period from 9.3.87 to 25.7.89 and from 31.7.89 to 15.7.90 was not drawn as the applicant remained employed with M/s HAL Bangalore and M/s Hyderabad Allwyn Ltd. during these period respectively and the pay and allowances drawn by the applicant while in employment with them was higher than the subsistence allowance otherwise admissible to him.

It is also further maintained in the counter subsistence allowance from 16.7.90 to 29.8.91FN, (the date of second removal from service) is not drawn in the absence of evidence of his unemployment during the said period. So in view of the contention raised by the respondents it will be appropriate to refer to the proviso to FR 53 which is as here under:-

"Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowance admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

9. So from the said proviso it is quite evident a government employee during the deemed suspension period and during the suspension period is employed, he cannot be paid subsistence allowance unless the pay and subsistence allowance paid to him had been less than the amount he had been paid

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while in employment. So in view of this position the respondents had rightly contended in their counter that if any subsistence allowance is to be paid to the applicant that the same would be paid to him in accordance with rules and regulations.

10. So as the applicant had since been removed from service and if any subsistence allowance has to be paid to the applicant either for the deemed suspension period or during the period of continuation of enquiry, up to the date of second removal of service, we direct the respondents to pass appropriate orders with regard to the said subsistence allowance in accordance with rules and regulations. OA is dismissed with the above said observation. Parties shall bear their own costs.

H. Rajendra Prasad
(H. RAJENDRA PRASAD)
MEMBER (ADMN.)

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T. Chandrasekhar Reddy
(T. CHANDRASEKHARA REDDY)
MEMBER (JUDL.)

Dated : The 24th March 1994
(Dictated in Open Court)

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Deputy Registrar(J)CC

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To

1. The Assistant Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Govt. of India, Mylapore, Madras-4, Tamilnadu.
2. The Deputy Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Govt. of India, Mylapore, Madras-4, Tamilnadu.
3. One copy to Mr. Y. Narasimha Reddy, Advocate, 3-6-740 Mimayatnagar, Hyderabad.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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TYPED BY ✓
CHECKED BY ✓

COMPARED BY ✓
APPROVED BY ✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND ✓

THE HON'BLE MR.A.B.GORTHI : MEMBER(AD)

AND ✓

THE HON'BLE MR.TCCHANDRASEKHAR REDDY
MEMBER(JUDL)

AND ✓

A.Rajendraprasad

THE HON'BLE MR.R.RANGARAJAN : M(ADMN)

Dated: 24-3-1994

ORDER/JUDGMENT

M.A.R.A./C.A./No.

in
O.A.NO. 85/92.

T.A.No.

(w.p.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

