

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD

OA 991/93.

Dt. of Order:3-2-94.

T.R.Dixitulu

....Applicant

Vs.

1. The Chief Post Master General,  
Andhra Circle, Hyd-1.
2. The Director of Postal Services,  
O/o PMG Andhra Circle, Hyd-1.
3. The Sr. Asst. Secy.,  
Hyd-1.
4. The Supdt., Postal Store Depot,  
Hyd-2.

...Respondents

Counsel for the Applicant : Shri S.D.Kulkarni

Counsel for the Respondents : Shri N.V.Ramana, Addl.CGSC

CORAM:

THE HON'BLE SHRI A.B.GORTHU : MEMBER (A)

THE HON'BLE SHRI T.C.REDDY : MEMBER (J)

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O.A.991/93

Date of Judgement: 3-1-1994

JUDGEMENT

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

This is an application filed under Section 19 of the Administrative Tribunals Act, to direct the Superintendent, Postal Store Depot, Hyderabad (3rd respondent herein) to revise the subsistence allowance by 50% from 29.11.91 with all consequential benefits.

2. The facts that give rise to this OA in brief, are as follows:

3. As a Departmental inquiry was contemplated as against the applicant, the applicant was placed under suspension with effect from 28.8.91. As per orders of the 3rd respondent dated 29.8.91, the applicant was paid subsistence allowance at an amount equal to the leave salary, which the Govt. 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. A regular charge sheet was issued as against the ~~applicant~~ applicant on 30.4.92. The applicant put in a representation to the Competent authority i.e. the Regional Director of Postal Services, Hyderabad City Division on 31.3.92, that, as the period of suspension exceeded three months that the Competent Authority was liable to review the subsistence allowance that was being paid to him consequent to the first period of three months, to the advantage of the applicant and that the amount of subsistence allowance was liable to be increased by a suitable amount not exceeding of 50% admissible during the period of first three months.

It is the case of the applicant that the delay in completion of the disciplinary proceeding was not directly attributable to him. As there was no response to the representation of the applicant dated 31.3.92, the applicant has filed

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the present OA to direct the respondents to enhance the subsistence allowance by 50% beyond the period of first three months and for consequential benefits as indicated above.

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

5. The respondents admit that the charge sheet was issued as against the applicant on 30.4.92. The Enquiry Officer submitted his report and final orders were passed on 10.11.93. The suspension of the applicant was revoked on 10.11.93. According to the contention of the respondents, subsistence allowance had been paid to the applicant

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of the applicant had been revoked on 10.11.93 and the applicant was reinstated into service. According to the respondents, ~~of rule and~~ the applicant was not entitled for revision of subsistence allowance to his advantage.

6. We have heard Mr SD Kulkarni, Counsel for the applicant and the Standing Counsel for the respondents.

7. This OA has been filed by the applicant on 17.8.93 by which date, the disciplinary proceedings had not come to an end. The disciplinary proceedings, admittedly, have come to an end only on 10.11.93. The applicant had been reinstated into service as per the orders of the competent authority <sup>dt. 10.11.93.</sup> It is needless to point out, while granting relief to the applicant, that the Tribunal can take into consideration the subsequent events and pass appropriate orders with regard to the relief that is to be granted to the applicant.

8. FR 54, 54-A and 54-B are exclusive in nature. These three rules (FR 54, 54-A & 54-B) deal with each situation with regard to the pay and allowances of an employee who had been reinstated into service after suspension.

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These rules deal mainly 1) where reinstatement takes place on the setting aside of dismissal or removal or compulsory retirement by the Government itself in appeal or review, (FR54) 2) where reinstatement takes place as a consequence of the dismissal, removal or compulsory retirement order being set aside by a Court of law (FR 54-A) and 3) When a Government servant who has been suspended is reinstated (as in this case) into duties (FR54-B). In this context, it will be more relevant to extract the relevant provisions of FR54-B which are as under:

"FR 54-B (1) When a Government servant who has been suspended is reinstated (or would have been so reinstated but for his retirement (including pre-mature retirement) while under suspension), the authority competent to order reinstatement shall consider and make a specific order--

- a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ~~ending~~ ending with reinstatement or (the date of his retirement including pre-mature retirement) as the case may be and,
- b) whether or not the said period shall be treated as a period spent on duty.

(2)   xx       xx               xx       xx       xx       xx  
      xx       xx               xx       xx       xx       xx

- (3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule(8) be paid the fully pay and allowances to which he would have been entitled, had he not been suspended:

Provided where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4)   xx       xx               xx       xx       xx       xx       xx  
      xx       xx               xx       xx       xx       xx       xx

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- (5) In cases other than those falling under sub-rules (2) and (3), the Government servant, shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which, he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(6)   xx       xx               xx       xx       xx       xx  
     xx       xx               xx       xx       xx       xx

(7)   xx       xx               xx       xx       xx       xx  
     xx       xx               xx       xx       xx       xx

- (8) The payment of allowances under sub-rule(2), sub-rule(3) or sub-rule(5) shall be subject to all other conditions under which such allowances are admissible.

- (9) The amount determined under the proviso to sub-rule(3) or under sub-rule(5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

So, Clause (9) of FR 54(B) specifically lays down that the ~~the~~ pay and allowances determined ~~the~~ shall not be less than the subsistence allowance and other allowances admissible under Rule 53. The subsistence allowance that is paid under FR 53 is only an interim measure pending the completion of the disciplinary proceedings. But applicant has got a right to the competent authority for enhancement of the subsistence allowance to his advantage upto a limit of 75% provided, the enquiry is not completed subsequent to the period of first three months after issuance of the suspension order, and the applicant had not prolonged the enquiry for reasons not directly attributable to the Govt. servant. Ofcourse, FR 53 does not specifically provide for second or subsequent revision but there cannot be any ~~objection~~ objection to such a review made by the competent authority. The competent authority

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review can pass orders either increasing or decreasing subsistence allowance upto 50% of the <sup>the</sup> amount of subsistence allowance initially granted according to circumstances of each case. Second or consequent review can be made at any time at the discretion of the competent authority. But, in this case, inspite of the representation of the applicant, the enhancement of subsistence allowance in accordance with FR 53 had not been considered or reviewed by the competent authority. So, it is the contention of the learned counsel appearing for the applicant, that in view of the provisions contained in FR 53 that ~~at least~~ a direction is liable to be given to the respondents to consider the revision of subsistence allowance that is payable to the applicant to suitably increase the rate of subsistence allowance upto 50% of the amount of subsistence allowance that had been initially granted. But, as already pointed out, FR 53 only contemplates the payment of subsistence allowance which is an interim measure during the pendency of the inquiry. But, after completion of the inquiry, under FR 54(B), appropriate orders are liable to be passed by the Competent Authority with regard to the pay and allowance for the suspension period. As already pointed out, Clause (9) of FR 54-B specifically lays down that the proportion of full pay and allowance determined under the proviso to sub rule (3) or sub-rule(5) of FR 54(B) shall not be less than the subsistence allowance and other allowances admissible under R FR 53. So, as could be seen, FR 54-B completely protects the rights of the employees with regard to pay and allowances where a Government servant who has ~~not~~ been suspended during the inquiry

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and had been reinstated into duty. So, it is quite clear from FR 54-B while passing orders with regard to pay and allowances, for the suspension period, the competent authority has to bear in mind the rights of the employee with regard to the relief of subsistence allowance also, that was liable to be paid to the employee during the suspension period, and ~~he~~ has to pass appropriate orders accordingly. We may point out that, if an employee was entitled to be paid enhanced subsistence allowance upto 50% of the amount of subsistence allowance, initially granted, and where such orders had not been passed by the competent authority during the pendency of the inquiry, under FR-54(B), there is a legal duty cast on the competent authority to pass appropriate orders. So, in view of FR 54-B, it will not be fit and proper to give a direction to the respondents to consider to review the payment of subsistence allowance of the applicant upto 50% of the amount of subsistence allowance that had been initially granted, as already pointed out, the disciplinary proceedings had come to an end and final orders ~~have~~ already been passed.

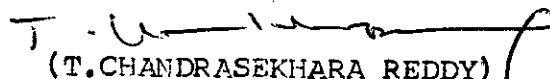
9. In view of the facts and circumstances of the case, it will be just and equitable if we give a direction to the respondents to pass appropriate orders with regard to the pay and allowances of the applicant for the suspension period from 28.8.91 to 10.11.93 in accordance with FR 54-B, while rejecting the claim of the applicant for a direction to the respondents to pay him enhanced ~~xxxxx~~ subsistence allowance. In the result, the claim of the applicant to give a direction to the respondents for enhanced subsistence allowance is hereby rejected. If appropriate orders have

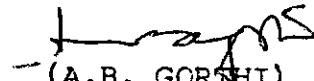
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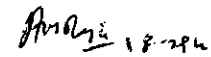
not already been passed by the respondents with regard to the pay and allowances payable to the applicant for the suspension period from 28.8.91 to 10.11.93, the respondents are hereby directed to pass appropriate orders with regard to the same. These directions shall be complied by the respondents within three months of this order. If the applicant continues to be aggrieved by the action of the respondents' orders with regard to the pay and allowances for the suspension period, the applicant would be at liberty to approach this Tribunal afresh in accordance with law. OA is disposed of accordingly. Parties shall bear their own costs.

  
(T. CHANDRASEKHARA REDDY)  
Member (Judl.)

  
(A.B. GORNHI)  
Member (Admn)

Dated: 3-2-1994

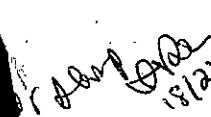
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Deputy Registrar (Judl.)

Copy to:-

1. The Chief Post Master General, Andhra circle, Hyd-1.
2. The Director of Postal Services, O/O PMG Andhra circle, Hyd.
3. The Sr. Supdt of Postal Services, Hyd Division, Hyd.
4. The Supdt., Postal Store Depot, Hyd-2.
5. One copy to Sri. S.D. Kulkarni, advocate, 99, Postal colony, Trimulgherry, Secunderabad.
6. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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18/2/94

O.A. 991/93

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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. GORTHY : MEMBER (A)

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

AND

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

Dated: 3/2/-1994.

ORDER/JUDGMENT:

~~M.A./P.A./C.A. No.~~

O.A. No.

991/93

T.A. No.

(W.P. No.)

Admitted and Interim Directions  
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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1 MAR 1994  
HYDERABAD BENCH.