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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

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D.A. 140/94.

Dt. of Decision : 30.12.1994.

Ch. Yadagiri

.. Applicant.

Vs

1. Union of India, rep. by the Secretary, Ministry of Communications, Department of Posts, New Delhi-1.
2. Sr. Superintendent of Post Offices, Hyderabad City Division, Hyderabad-500 001.
3. Director of Postal Services (HCR) O/o the Chief Postmaster General, A.P.Circle, Hyderabad-500 001. .. Respondents.

Counsel for the Applicant : Mr. T. Jayant

Counsel for the Respondents : Mr. V. Bhimanna, Addl.CGSC.

CORAM:

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

D.A. 140/94.

Dt. of Decision : 30.12.1994.

ORDER

( As per Hon'ble Shri A.B. Gorthi, Member (Admn.) )

The applicant who was placed under deemed suspension from 10.12.1987 to 25.06.1992 claims by means of this OA an upward <sup>revision</sup> ~~of~~ the quantum of subsistence allowance granted to him for the said period.

2. The applicant while serving at Hyderabad Postal Stores Depot was subjected to a disciplinary enquiry which culminated in the imposition of a major penalty of dismissal from service. Aggrieved by the same he approached the Tribunal in D.A.No. 605/91 which was allowed following the judgement of the Supreme Court in Mohd. Ramzan Khan's case. The respondents were given liberty to proceed further after furnishing the applicant with a copy of the enquiry officers report. Consequently, the respondents placed the applicant under deemed suspension from 10.12.1987. After furnishing the applicant with a copy of the enquiry officer's report and after considering his representation thereon, the disciplinary authority once again awarded the penalty of dismissal with effect from 26.06.1992.

3. The applicant represented for a review of the quantum of the subsistence allowance of 50% of pay and allowances that was granted to him for the period of deemed suspension. His request however was turned down.

4. The respondents in their reply affidavit have not disputed the above stated facts averred in the OA by the applicant. They however contended that the request

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of the applicant for increase of the subsistence allowance was duly considered and was rejected by the competent authority.

5. Heard learned counsel for both the parties. Under Rule 10(4) of the Central Civil Services (CCS) Rules, 1965, where a penalty of dismissal ~~is set aside~~ by a Court and the disciplinary authority decides to ~~not~~ <sup>conduct</sup> a further enquiry, ~~government servant shall be~~ deemed to have been placed under suspension from the date of the original order of dismissal. As regards a review of the quantum of subsistence allowance Fundamental Rule 53(1)(ii)(a)(i) lays down that the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance if, in the opinion of the competent authority, the period of suspension has been prolonged for reasons, ~~not~~ directly attributable to the Government Servant. Similarly, the amount of subsistence allowance may also be reduced if the period of suspension has been prolonged due to reasons directly attributable to the Government Servant.

6. A careful reading of the afore-stated provisions would clearly indicate that the suspension of the employee is a legal fiction and not a fact. The fact is that the employee ~~remained~~ out of service till his re-instatement. However by virtue of Rule 10(4) of the Central Civil Services (CCS) Rules, the government employee shall be deemed to be under suspension during the said period under certain circumstances as stipulated in the said rule. Where the suspension is not factual, but is only a fiction, the question of the period of such deemed suspension having been prolonged either on account of the employee's

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acts/omission or on account of the department's acts/omission does not arise. The question of revision of the quantum of subsistence allowance under the circumstances, either enhancing the subsistence allowance or reducing the subsistence allowance does not arise. At the most, after the order of the competent authority/issued declaring the employee to be under deemed suspension, if there is considerable delay in further progressing with the case of the employee, the question of reducing the subsistence allowance may arise. In the instant case the order of the competent authority was issued on 20.05.1992 placing the applicant under deemed suspension with effect from 10.12.1987 and within about a month thereafter the applicant's case was finalised and he was dismissed from service vide order dated 20.06.1992. Consequently, there is no question of any prolongation of the period of suspension due to anybody's fault.

7. In view of the rule position and the circumstances of the case as aforesaid, I find no merit in this OA and the same is hereby dismissed. No order as to costs.

*transcript*  
(A.B. GORTHI)  
MEMBER(ADMN.)

Dated : The 30th December 1994.  
(Dictated in Open Court)

*Amrit 3-1995*  
Deputy Registrar(3)

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

~~THE HON'BLE MR. JUSTICE V. NARAYANA RAO~~  
~~THE HON'BLE MR. R. RANGARAJAN~~

AND  
A.B. Gorthi  
THE HON'BLE MR. R. RANGARAJAN : M(ADMIN)

DATED: 30 - 12-1994

ORDER/JUDGEMTN:

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

in

O.A.No. 140/94

T.A.No. (w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

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