

ANNEXURE - I

List of papers in Original Application No. 174/94.

Sl. No. of Papers	Date of Papers or Date of Filing	Description of Papers.
6		

Part - I

2-5-95 Original Judgement

7-2-96 O.A & Material Papers
Counter

/ /
PART -- I,

PART -- II,

PART --- III

Destroyed.

A
5/1/2000.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
RECORD SECTION INDEX SHEET

O.A NO. 174 /1994

a) Applicant (s) A. Mallaiyal
Versus

b) Respondent (s) The Secretary Ministry of Defence
1994 versus a company

S. l. No.	Part. I Description of documents.	Page No.
6	Order sheet	1
	Original Application Material papers	9 to 10 11 to 26
	Order dated .	27 to 29
	Counter Affidavit .	
	Reply Affidavit .	
	Order dated.	
	PART. II	
	Duplicate order sheet.	
	" Application	
	" Material papers	
	" Order date .	
	" Counter Affidavit..	
	" Reply Affidavit	
	" Order date.	
	PART. III . Vakalat	
	Notice Papers	
	Memo of Appearance..	

29/5/95

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

•.A. No. / ~~114~~ N.

114
A. Mallayya

Applicants (s)

VERSUS

Secretary, Mys. & C. Respondents (s)

Def. Com. N. 1994 and 2000

Date	Office Note	Orders
15-2-94		Post office 22-2-94 OR 114 TC (A) BPO C.D. R. (W.C.) Q 22-2-94
22-2-94 23-2-94	Notice sent to RRs 163 by RPAD. R1- RR RR- R3 } NSNR On stul94.	Admit. D HRRN 7(A) HVNR.J VC

22-2-94

+1331/23 batch

04-17/4/94

①

DATE	OFFICE NOTE	REMARKS
6.4.94	<p><u>before filing Regs (T)</u></p> <p>No notice has been duly served on the respondent 1 to 3 and the case shall be ready for hearing</p> <p>Case 31/8/94 Regs of 1993, add it to the ready list.</p> <p>✓ <u>by Regs(T) C.C.</u></p>	<p>20/4/94 Date HABG M(A)</p> <p>None for applicant. Post it for 1.5.95.</p> <p>HABG M(A)</p>
12.4.94	<p>Counter-Affidavit filed Regs M.A.V. Ramana, Addl. C.R. on behalf of Petpds. on 21/3/94.</p>	<p>None for the applicant. Post it for dismissal tomorrow i.e. 2.5.94</p>
1-5-95		<p>None for the applicant. Post it for dismissal tomorrow i.e. 2.5.94</p>
2.5.95	<p>Mr. K. Sudhakar Reddy Mr. N. Devaraj</p>	<p>DA is dismissed with order as to cost. Will order on separate d.</p>

HABG
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH HYDERABAD.

ORIGINAL APPLICATION NO. 174 OF 1994

Shri A. mollela

Applicant(s)

Versus

Secretary, Ministry of Defense, New Delhi

6/20/94

Respondent(s)

This Application has been submitted to the Tribunal by Mr. K. Sudhakar Addy Advocate under section 19 of the Administrative Tribunals Act. 1985 and same has been scrutinised with reference to the points mentioned in check list in the light of the provisions contained in the Administrative Tribunal (Procedure) Rules, 1987.

The application is in order and may be listed for admission on 174

Scrutiny Officer.


Deputy Registrar(J)

11. Have legible copies of the annexures duly attested been filed? *y*
12. Has the Index of documents been filed and pagination done properly? *y*
13. Has the applicant exhausted all available remedies? *y*
14. For form I been made?
15. Have required number of envelopes (file size) bearing full address of the respondent's been filed? *y*
16. (a) Whether the reliefs sought for, arise out of single cause of action? *y*
(b) Whether any interim relief is prayed for? *y*
17. In case an M.A. for condonation of delay is filed, is it supported by an affidavit of the applicant?
18. Whether this case can be heard by single Bench? *y*
19. Any other point?
20. Result of the Scrutiny with initial of the Scrutiny Clerk.

Section ~~Off~~ ser *1*
th

Deputy Registrar

REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Diary No.

Report on the scrutiny of Application

Presented by Mr. K. Jidduwar Nidhi

Date of Presentation.....

Applicant(s) A. Mallieh

Respondent(s) Secretary, Deccan & Delli & 284

Nature of grievance Arrested documents

No. of applicants.....1.....

No. of respondents....3.....

CLASSIFICATION

Department and No.

1. Is the application in the proper form?

(Three complete sets in paper books form
in two compilations)

2. Whether name, description and address of
all the parties been furnished in the
cause title?

3. (a) Has the application been duly signed
and verified? {

(b) Have the copies been duly signed? {

(c) Have sufficient number of copies of
the application been filed? {

4. Whether all the necessary parties are
impleaded? {

5. Whether English translation of documents
in a language other than English or Hindi
been filed? {

6. Is the application in time?
(See Section 21)

7. Has the Vakalathnama/Memo of appearance/
authorisation been filed? {

8. Is the application maintainable?
(U/s 2, 14, 18 or U.R. 8 etc.) {

9. Is the application accompanied by IPO/DD
for Rs.50/-? {

10. Has the impugned orders original/duly at-
tested legible copy been filed? {

Contd.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

INDEX SHEET

O.A. No. 174 of 1993

CAUSE TITLE A. Mallaian

Secretary, Min. of Defence

N - BOMBS and D m

Sl. No.	Description of documents.	page No.
1.	Original Application	145
2.	MATERIAL PAPERS.	648
3.	Vakalat	1
4.	Objection sheet	1
5.	Spare Copies	13
6.	Covers.	13

Ag. to direct the D.R.O. to grant the Applicant the annual Grade increments which fell due during Dec '76 and to fix his pay. (2) To grant annual Grade increments

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ADDITIONAL BENCH

AT HYDERABAD.

High Court
SINGLE MEMBER CASE A.No. 174 of 1994

Defence
DEFENCE

Between :

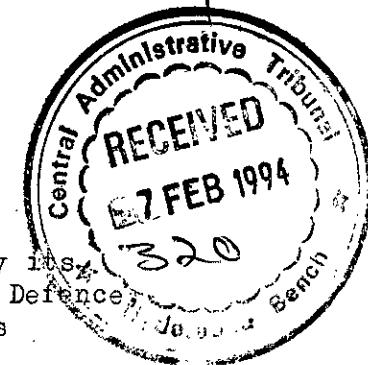
A. Mallaiah,

... Applicant

and

Union of India, Rep. by its
Secretary, Ministry of Defence
New Delhi. and 2 Others

... Respondents



MATERIAL INDEX

S.No:	Description of the document.	Page Nos.
1.	Original Application.	1 to 5
2.	Lr. No. DLRL/PEERS/AM/669 dt. 7-8-1976 of the Director, DLRL, Hyderabad, Placing the applicant under suspension.	6
3.	Representation dated 10-2-1993 of the applicant.	7

Certified that the above documents are true copies of
the originals.

Station : Hyderabad.

Date : 7-2-94

DR
Counsel for Applicant.

Recd Dr. A. R. Demy
S. V. R. Srinivas

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ADDITIONAL BENCH

AT HYDERABAD.

O.A.No. 174 of 1994

Between :

A. Malliah, ... Applicant

and

Union of India, Rep. by its
Secretary, Ministry of Defence,
New Delhi. and 2 Others. ... Respondents

CHRONOLOGICAL EVENTS.

Date	Subject in brief.	Page Nos.
1971	Applicant appointed as Tradesman Mate.	2
	Applicant subsequently promoted as Fitter.	2
7-8-1976	3rd respondent placed the applicant under suspension.	2
28-2-1989	Hon'ble High Court of Rajasthan (Jaipur Bench) passed orders in Kan Singh V/s State of Rajasthan, reported in 1989(4)SLR- page 763.	+

Station : Hyderabad.

Date : 7-2-1994 Counsel for Applicant.

4

APPLICATION UNDER SECTION 19 OF THE CENTRAL ADMINISTRATIVE
TRIBUNAL ACT.

Date of Filing :

of

Date of Receipt :

By Post :

Registration :

Signature :

Registrar :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ADDITIONAL BENCH
AT HYDERABAD.

O.A.No. 174 of 1994

Between :

A. Mallaiah, S/o (late) Narsaiah,
Age about : 50 years
Chandrayanagutta Lines,
Hyderabad - 500005.

... Applicant

Versus

1. Union of India, Rep. by its
Secretary, Ministry of Defence,
New Delhi.
2. The Scientific Adviser to the Minister
of Defence & Director General Research &
Development, Directorate of Personnel,
Ministry of Defence, DHQ PO NEW DELHI-11.
3. The Director
Defence Electronics Research Laboratory,
Chandrayanagutta Lines, Hyderabad-500005. ... Respondents

DETAILS OF APPLICATION :

1. Particulars of Applications :

(i) Name of Applicant :	A. MALLAIAH
(ii) Description and office in which employed:	FITTER, DLRL, Hyderabad-5.
(iii) Office Address :	DLRL, Chandrayanagutta Lines, Hyderabad-5
(iv) Address for service of all notices.	Mr. K. Sudhaker Reddy, Advocate, H.No. 2-2-1132/5. New Nallakunta, Hyderabad - 44

A. mallaiah

(3)

2. Particulars of the Respondents.

(i) Name and designation of the respondents : As mentioned in the cause title.
(ii) Office address of the respondents : -do-
(iii) Address for service of all notices : -do-

3. Particulars of the order against which application is made :

(i) Date : *No impugned order*
(ii) Passed by :
(iii) Subject in brief : To direct the respondents to grant annual grade increments to the applicant from date of his suspension and continue to grant till the case is finally disposed.

4. Jurisdiction of the Tribunal :

The applicant declares that the jurisdiction of the Tribunal under section 14 of the Act.

5. Limitation :

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. FACTS OF THE CASE :

(i) The applicant herein is an employee of the Defence Electronics Research Laboratory, Chandrayanagutta Lines, Hyderabad. He was first appointed as Tradesman Mate in 1971 and subsequently promoted as Fitter.

(ii) The 3rd respondent herein kept the applicant under suspension on 7-8-1976. The applicant is being paid subsistence allowance. It is humbly submitted that the respondent are paying subsistence allowance at the rate of 75% of pay. The respondent did not grant any annual increments from the date of suspension ie., on 7-8-1976. The applicant is due for increments after 7-8-1976 that is the date of suspension during December 76 and every year thereafter. An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in public interest and also in the interest of the government servant concerned. The contract of service subsists

H. Mallu

(b)

during the period of suspension and an employee remains in service and he is entitled to all benefits of service, even though he is not expected to work during the period of suspension. Subsistence allowance is paid by the government so that the government servant against whom an order of suspension is passed on account of the pendency of any disciplinary proceedings or a criminal case instituted against him, could maintain himself and his dependents, until the departments proceedings or the criminal case, as the case may be comes to an end and the appropriate orders are passed against the government servant by the government regarding his right to continue in service etc., depending upon the final outcome of the proceedings instituted against him or the trial of the case. A Government Servant cannot engage himself in any other activity to earn his bread during the period of suspension. The amount of subsistence allowance payable to the government servant concerned should therefore be reviewed from time to time where proceedings drag on for a long time, even though there may be no express rules insisting on such review. In doing so, the authority concerned no doubt has to take into account whether the government servant is in any way responsible for the undue delay in the disposal of the proceedings initiated against him. The rules quoted above do not envisage that the applicant will not be entitled to any annual grade increment which is due to usual course. The annual grade increment shall ordinarily be drawn ~~as~~ as matter of course unless it is withheld by a specific order. Stoppage of annual grade increment is itself a minor penalty as provided under Rule 14 of the CCS (CCA) Rules, 1965 and therefore, if a government servant who is suspended is denied the annual grade increments it will amount to a penalty without any determination of his guilt.

(iii) The applicant herein submit that he is still under suspension for a prolonged period of 17 years and the matter is pending with the department in the process of enquiry. The authorities reviewed the position only once and increased the subsistence allowance from 50% to 75% after prolonged period of suspension as the authorities did not attribute the delay to the applicant.

(iv) The applicant further submits that after passing the suspension order dated 7-8-1976, annual grade increments fell ~~on~~ during December 76 onwards every year but they were not allowed to the petitioner and were not added to his pay for calculating the

A. malhi



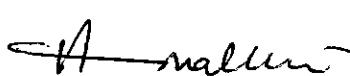
subsistence allowance. The petitioner further asserts that no order of stoppage of annual grade increments have been passed by the Government and still, the annual grade increments have not been taken into consideration while determining the applicants subsistence allowance. The petitioner made representations to which he ultimately not received any reply. The action of the respondent is bad in law in view of the submissions made earlier and also inview of the decisions of the Hon'ble Courts including Hon'ble Supreme Court of India in several decisions. In a latest judgement of the Rajasthan High Court, Jaipur Bench, the Division Bench of the Hon'ble Court in KAN SINGH versus State of Rajasthan reported in 1989(4) SLR-page 763- held that stoppage of annual grade increments while under suspension will amount to penalty without any determination of his guilt. The Hon'ble judges relied upon several decisions rendered by other courts including the Hon'ble Supreme Court of India, while passing the order. Hence, the present application is filed.

MAIN PRAYER : In the interest of justice the Hon'ble Tribunal may be pleased to direct the respondents herein to grant the application ~~of~~ the annual grade increments which fell due ~~in~~ during December 76 and thereon and fix the pay of applicant in the revised scales basing on the pay so raised and continue to grant annual grade increments from December 1976 in the revised scales and pay all the arrears and to pass such other order or orders as this Hon'ble Tribunal deems fit and proper.

8. INTERIM PRAYER : The applicant prays that this Hon'ble Tribunal may be pleased to direct the respondents to pay the subsistence allowance of the applicant in the revised scales after raising the pay to the present stage from now onwards pending disposal of the O.A. and pass such other order or orders in the interest of justice.

9. Details of the remedies exhausted : The applicant submitted a representation dated 10 Feb 1993 and no reply received.

10. Matters not pending with any other court : The applicant further declares that the matter regarding which this application is made is not pending before any court of law and any other authority or any other Bench of Tribunal.



(8)

11. Particulars of Postal Order in respect of the
application fees :

I.P.O / B.C./D.D. Removed

(i) Number of Indian Postal Order : 638 702341/16
(ii) Name of Issuing Post Office : 702345
(iii) Date of Issue of Postal Order : 7-2-1994
(iv) Post Office at which payable :

12. Details of Index : An index in duplicate containing the
details of the documents to be relied upon is enclosed.

13. List of enclosures :

A. Mallu
Signature of Applicant.

VERIFICATION

I, A. MALLAIAH, son of (late) Narsaiah, aged about 50 years
Occ : Fitter, Defence Electronics Research Laboratory, (DLRL),
Chandrayanagutta Lines, Hyderabad - 500005, do hereby declares and
verify that the contents in para 1 to 13 are true to ~~my~~ my know-
ledge and belief and believe the same to be true and I have not
suppressed any material facts.

A. Mallu
Counsel for Applicant.

A. Mallu
Signature of Applicant.

Place : Hyderabad.

Date : 7-2-94

To

The Registrar, Central Administrative Tribunal,
Additional Bench, Hyderabad.

(3)

GOVERNMENT OF INDIA
Ministry of Defence,
DEFENCE ELECTRONICS RESEARCH LAB
Chandrayanagutta Lines,
HYDERABAD- 500005.

No. DLRL/PERS/AM/669

Dated : 7th August 1976

O R D E R

WHEREAS a disciplinary proceeding against Shri. A. MALLAIAH Fitter (T/No.369), Defence Electronics Research Laboratory, Chandrayanagutta Lines, Hyderabad, is pending.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules 1965, hereby place the said Shri A. Maliaiah, Fitter (T/No. 369) under suspension with full pay.

It is further ordered that during the period that this order shall remain in force the Headquarters of Shri. A. Mallaiah, Fitter (T/No. 369) should be HYDERABAD and the said Shri. A. Mallaiah shall not leave the Headquarters without obtaining the previous permission of the undersigned.

To Sd/-
Director
Defence Electronics Research Laboratory
Chandrayanagutta Lines, Hyderabad-5
(V. Narayana Rao)

Shri. A. Mallaiah, Fitter (T/No. 369)
MED, DLRL, Hyderabad.

Orders regarding subsistence allowance as admissible to him during the period of suspension will be issued separately.

// COPY //



From : A. Mallaiah,
House No. 19-1-981,
Gollakidiky, Hyderabad - 264.

To

The Director,
Defence Electronics Research Laboratory,
Chandrayanagutta Lines,
Hyderabad - 5

Sub :- Grant of Annual Grade increments during
Suspension - Reg

Sir,

I, the undersigned beg to state and submit the following few lines for your kind consideration and necessary action.

Sir, I was suspended on 7-8-1976 by the Director, DRL, Hyderabad and I am being paid subsistence allowance of 75% every month. I have not granted any annual grade increments from my suspension and my basic was calculated on the date of suspension only. Withheld my annual grade increments without proper order is illegal and against the rules. Further I submit that stoppage of annual grade increments while under suspension will amount to penalty without any determination of my guilt.

Hence, I request you to grant the annual grade increment which fell due to me during December 76 and thereon and fix my pay in the scales basing on the pay so raised and continue to grant annual grade increments and pay all the arrears due to me at the earliest.

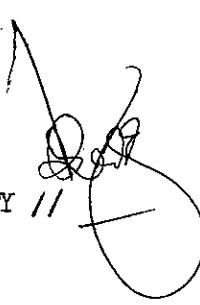
Thanking you,

Yours faithfully,

Place : Hyderabad

Sd/-
(A. Mallaiah)
Dt: 10-2-1993

Date : 10-2-1993


// COPY //

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Date : 8-2-94

To O.A. Regd. No. 320/94

Mr. K. Sudhakar Reddy,
Advocate

Sir,

I am to request you to rectify the defects mentioned below in your application within 14 days from the date of issue of this letter; failing which your application will not be registered and action Under Rule 5 (4) will follow.

① 1. Part 7, 3rd line, 2nd word needs correction.
2. Copy of the representation should be clubbed to the Borstels' file of act.
② 3. After duly addressed of Borstels should be filed.

4) Letter is to be made on the Standing counsel

objection (compld)



10

11

12

13

Act 5 extn 320/94-

14. 15) Objection no 1- correction made in the
1st copy got should be carried out in other copies. Ans Regd.
2) previous objection no 3 should be completed later. Deputy Registrar (Judl)

Ans Regd.
Torts
On 02

objection (compld)



(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O. A. No. 174 of 1994.

Between:

A. Mallaiah. APPLICANT.

and

1. Union of India rep. by its
Secretary, Ministry of
Defence, New Delhi.
and two others. RESPONDENTS.

MATERIAL INDEX

S.No.	Description	Annexure.	Page No.
1.	Periodical Increment Certificate prescribed by Govt. to be submitted to Audit authorities.	'A'	144 546
2.	Hon'ble CAT, Jodhpur Bench Judgement dated 27.3.1989 in O.A. No. 420/87.	'B'	374/16

HYDERABAD,

DATE: 5 -4-1994.

N.U. 
COUNSEL FOR THE RESPONDENTS.

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

O.A.NO.174/1994

Between:

A Mallaiah

....Applicant

and

1. Union of India, Rep. by its Secretary, Ministry of Defence, New Delhi.
2. The Scientific Adviser to the Minister of Defence & Director General Research & Development, Directorate of Personnel, Ministry of Defence, DHQ PO NEW DELHI-110 011.

Defence Electronics Research Laboratory,
Chandrayanagutta Lines,
Hyderabad - 500 005.

... Respondents

COUNTER REPLY AFFIDAVIT

I A RATNA DAS S/O Late Shri Bhushanam aged about 49 years working as Senior Administrative Officer Grade I in Defence Electronics Research Laboratory, Hyderabad R/O Hyderabad do hereby solemnly and sincerely affirm and state as follows:

1. THAT I am Respondent No.3 herein as such I am well acquainted with the facts of the case. I am authorised to give this affidavit on behalf of other respondents also.
2. I have read the original application filed by the above named applicant and I deny the several material allegations that of specifically admitted herein.

Attestor.

Deponent.


Admin Officer,
DLRL HYDERABAD-500 005.
(A. BALACHANDRAN)


A Ratnadas,
Senior Administrative Officer-I
(Ministry of Defence,-Govt. of India),
Defence Electronics Research Laboratory
HYDERABAD 500 005, (A.P.)

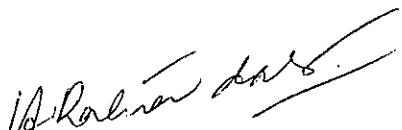
3. Before traversing in detail several material allegations, the averments and contentions made therein I beg to submit as follows:-

4. In reply to para 6(i)to(iii) it is a fact that the applicant was appointed as Tradesman Mate during August 1971 and later promoted as Fitter during July 1973. It is also a fact that the applicant was kept under suspension since 07.08.1976 and that the subsistence allowance is being paid to him at the rate of 75% of pay as per the existing rules. While agreeing the contention of the applicant that an order of suspension is not an order of imposing punishment on person found to be guilty, it is stated that the applicant did not cooperate to ensure smooth disposal of the disciplinary proceedings instituted against him by dragging the matter to the court of law challenging the disciplinary authority which is evident from the High Court of A.P., Supreme Court of India and CAT Hyderabad Bench Judgements in the ~~case. It is further submitted that the basic~~ requirement for grant of Annual Increment in the time scale is 12 months qualifying service in which, period under suspension do not count for qualifying service for grant of Annual Increment as per the periodical increment certificate IAFA 456 prescribed by the Govt. to be submitted to the audit authorities alongwith the order for grant of Annual Increment (Annexure 'A'). Also as per the guidelines envisaged by the Govt. for counting period of suspension "Time passed under suspension pending inquiry into the conduct will count as qualifying service where on conclusion of such inquiry, he has been fully

Attestor.


Admin Officer,
DLRL, HYD 400005.
(A. BALACHANDRAN)

Deponent.



A. Ratnadas,
Senior Administrative Officer-I
(Ministry of Defence; Govt. of India),
Defence Electronics Research Laboratory
HYDERABAD - 500 005, (A.P.)

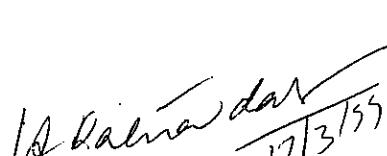
exonerated or the suspension is held to be wholly unjustified". Even for crossing of efficiency bar in the time scale the guidelines envisaged for DPC in respect of the suspended individuals states "The DPC will assess suitability of the Govt. servant without taking into consideration the disciplinary case/criminal prosecution pending. The recommendation of the committee will, however, be kept in a sealed cover. If he is exonerated on completion of the proceedings, the recommendation in the sealed cover will be given to the competent authority, who may lift the bar retrospectively from the date it originally became due. If the proceedings end in imposition of one of the minor penalties, the case may be reviewed by the DPC with reference to the original recommendation, the circumstances leading to the case and the penalty imposed and having regard thereto to make specific recommendation as to whether efficiency bar crossing may be allowed from the original due date or from the prospective date. In the case of imposition of major penalty the recommendation of the DPC will not be acted upon". Therefore, the question of granting of Annual Increment during suspension as claimed by the applicant does not arise.

5. In reply to para 6(iv) it is a fact that

Attestor.


Admin. Officer,
O.L.R.L. HYDERABAD-500 005.
(A. BALACHANDRAN)

Deponent.


A. Ratnadas
17/3/55
A. Ratnadas,
Senior Administrative Officer-
(Ministry of Defence)-Govt. of India
Defence Electronics Research Labo
HYDERABAD - 500 005. (A.P.)

the subsistence allowance is being paid in the revised scale with effect from 01.01.1986 as per CAT Hyderabad Bench direction in OA No.209/93 filed by the Applicant. Annual increments in the revised scales also not granted to the applicant as there is no provision as mentioned in preceding paragraphs. In this context it may be mentioned that the SLP filed by the Department in Supreme Court of India against CAT Hyderabad Bench order dated 02.11.1992 for payment of subsistence allowance in the revised scales in OA No.959/1992 is still pending. The Hon'ble CAT Jodhpur Bench held in its judgement in OA No.420/87 on 27.03.1989 that the increments need not be granted during the period of suspension and the amount of increment also need not be taken into account for computation of subsistence allowance. A copy of order is filed as Annexure 'B'.

6. In reply to para 9, it is submitted that the representation dated 10.02.1993 said to have been submitted by the applicant has not been received in the 3rd Respondent's office.

7. In view of the facts stated above, it is submitted that the applicant has not made out any case, this Hon'ble Tribunal may be pleased to dismiss the original application with costs.

Sworned and signed
before me this 17th day
of March 1994.

A Ratnadas
A Ratnadas,
DEPONENT, Senior Administrative Officer-I
(Ministry of Defence; Govt. of India),
Defence Electronics Research Laboratory
HYDERABAD - 500 005, (A.P.)

Before me.

Admin. Officer
Admin. Officer,
DLR L. HYDERABAD-500 005.
(A. BALACHANDRAN)
Attestor.

6

16

2

प्रमाणपत्र/Certificate :—

1. प्रमाणित किया जाता है कि इस 'विवरण देखाए गये अधिकारी खाना 7 में दिखाई तारीख से कम से कम वर्ष तक नियुक्तियों के पदबारी रहे हैं। इस अवधि में कदाचार के लिए मुअतली और अन्य अपेक्षित सेवा की अवधि शामिल नहीं है।
Certified that the officer(s) shown in the statement has/have been incumbent(s) of the appointment(s) for not less than year(s) from the date(s) shown in column 7 after deducting period of suspension for misconduct and other non-qualifying service.

2. प्रमाणित किया जाता है कि अधिकारी ख 3 में दिखाई गई वर्तमान वैतन-वृद्धि की वास्तविक तारीख की आकस्मिक छुट्टी के अलावा और किसी भी प्रकार की छुट्टी पर नहीं थे।
Certified that the officer(s) was/were not leave of any kind except C. L. on the date(s) of accrual of present increment shown in column 8.

3. प्रमाणित किया जाता है कि जहां आवधिवैतन-वृद्धि प्रदान करने के लिये कोई शर्तें निर्धारित की गई हैं, जैसे व्यवसायी परीक्षा पास करना टाइप टेस्ट पास करना आदि उन्हें पूरा कर लिया गया है।
Certified that in cases where certain conditions have been prescribed for the grant of periodical increment, e.g., passing of trade test, typewriting test, etc., the same have been fulfilled.

हस्ताक्षर/Signature.....

पद/Designation.....

टिप्पणियाँ/Notes :—

1. जिन सूरतों में आवश्यक हो, रक्षा मंत्रालय कार्यालय जाग्रत्त सं. 3(1)62/10291/डि० (सिव०-1) तारीख 11 अक्टूबर, 63 तथा संशोधित और कार्यालय जाग्रत्त सं. 81138/4/ओर्ग 4 (सिव०) (डि०)/10615/डी० (सिव०-1) तारीख अक्टूबर, 63 यथा संशोधित संदर्भ में रक्षानापन्न अथवा अस्थायी नियुक्तियों पर लिखन बनाये रखने के बारे में उपयुक्त अधिकारी का प्रमाण-पत्र संलग्न किया जाए।
Certificate of the appropriate authority regarding retention of lien on the officiating or temporary appointment with reference to Ministry of Defence OM No. 3(1)62/10291/D (Civ-I) dated 11 Oct. 63, as amended and OM No. 81138/4/Org. 4 (Cid) 10615/D (Civ-I) dated 24 Oct. 1963 as amended is to be attached in cases where necessary.

2. समर्व अधिकारी के इस आशय का प्रमाण कि व्यक्ति दक्षतारोध पार करने के योग्य है भी, जहां आवश्यक हो, प्रस्तुत किया जाना चाहिए।
Certificate from the competent authority the effect that the individual(s) is/are fit to cross the E8 should also be furnished wherever necessary.

आवधिक वेतन-वृद्धि प्रमाणन
PERIODICAL INCREMENT CERTIFICATE

पदधारी का नाम Name of the incumbent	क्या स्थायी, स्थायीवत, स्थानापन्न अथवा अस्थायी Whether substantive, quasi- permanent, officiating or temporary	उस पद का नाम, जिसमें वेतन-वृद्धि प्राप्ति की गई है Designation of the post in which increment is drawn	वर्तमान वेतन Present pay	वेतन मान Scale of pay	वर्तमान वेतन-वृद्धि की दर Rate of present increment		पिछली वेतन-वृद्धि अथवा प्रद पर नियुक्ति की तारीख Date of last increment or of the appointment to the post	वर्तमान वेतन- वृद्धि की तारीख Date of present increment	वर्तमान वेतन- वृद्धि के पश्चात् वेतन Pay after present increment	वह अवधि जो वेतन-वृद्धि की प्राप्ति के योग्य नहीं समझी जाती है Period not qualifying towards increment	अंकत Ranks
					वार्षिक Annual	वार्षिकतर (स्वरूप वताइये) Other than annual (specify nature)				में From	तक To
2	3	4	5	6	7	8	9	10	11		

1689(4)(CAT)

Shri Rohitshwa Kumar v. State of Rajasthan

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CENTRAL ADMINISTRATIVE TRIBUNAL

(Jodhpur Bench)

O.A. No. 420/87

Decided on 27-3-1989

CORAM

The Hon'ble Mr. B.S. Sekhon, Vice Chairman
The Hon'ble Mr. G.C. Singvi, Member (A)

Shri Rohitshwa Kumar

—Applicant

Versus

State of Rajasthan

—Respondent

(i) Pay—AIS (D & A) Rules, Rule 4, AIS (Leave) Rules, Rule 20—Applicant was suspended in 1985, new scales came on 1-1-1986, benefit not given as per rule 4—subsistence allowance is to be based on, leave salary which is based on salary he drew while going on leave—Held pay per rule 4 can not mean a static pay but a revised pay which was admissible to other employees also. (Para 16)

(ii) Revision of Pay during Suspension—Applicant was suspended prior to 1-1-1986—New scales became effective on 1-1-1986—Benefit not given to him being under suspension—Held he did not cease to be a Govt. servant by his suspension, so had to be refixed in new scales like other employees—Gave following reasons in favour of this (i) Relationship of master & servant continued (ii) fortuitous circumstance of suspension can't deprive him of his rights as an employee (iii) Objective of subsistence allowance was to enable employee to subsist (iv) Rules should be interpreted in conformity with their objective. (Para 15)

(iii) Article 14/16/21, Discrimination—Applicant was suspended prior to 1-1-1986—Not allowed benefit of fixation in new scales—Held suspended employee is entitled to same rights as others, to create them in a separate class will not be a reasonable classification and it will amount to treating equals as unequal—It is discriminatory and violates Article 21, 14/16. (Para 15(ii))

(iv) Interpretation—Rule 4, 5B of AIS (D & A) Rules and 20 of AIS (Leave) Rules provide for payment of subsistence allowances of rate as half pay leave—Pay interpreted by respondents as pre-revised pay—The object of rule is to enable the suspended employee to sustain—Held interpretation should be as per objective of the rule, the construction of rule should be as per fundamental rights, thus interpreted the word 'Pay' as post revision pay. (Para 15 (iii) & (iv))

(v) Withholding of increment, increment during suspension, Rule 6 (i) AIS (D & A) Rule—Applicant was suspended and subsistence allowance counted without giving increments during suspension—Alleges it was penal—Held rule 6(i) was not exhaustive and did not bar rule 4—It was a case not of withholding of increments but of computation of subsistence allowance, so rule 6(i) not attracted.

Held as held herein-above, it is not a case of withholding of increment. That apart rule 6(i) is not exhaustive and in any case does not knock out the

application of rule 4 of the Rules and that of rule 20 of 1955 Rules. It may not be out of place to mention that the omission to include increment for purposes of computing the quantum of subsistence allowance cannot be said to be patently unfair or unreasonable, particularly, when regard is had to the fact that depending upon the order which may be made by the competent authority under rule 5B of the Rules on the conclusion of the enquiry, minor difference in this behalf would be payable to the applicant. (Para 25)

(vi) **Pleadings, challenging validity of rules—** Objection that constitutional validity of rules was not challenged earlier so could not be allowed at this stage—Held the constitutional validity of rules can be challenged at any stage of the proceedings. (Para 19)

Cases referred :

1. Khem Chand v. Union of India, AIR 1963 SC 687.
2. State of Maharashtra v. Chandrabhan Tale, (1983) 3 SCC 387.
3. O.P. Gupta v. Union of India and others, (1987) 4 SCC 328.
4. Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni, (1983) 1 SCC 124.
5. P.S. Sawhney v. R.K. Aggarwal and another, (1988) 1 SCC 353.

Advocates :

For the Applicant : Mr. M.S. Singhvi, Advocate.

For the Respondent : Mr. P.K. Bhansali, Advocate.

IMPORTANT POINTS

1. *An employee under suspension is not deprived of right to fixation of pay in new scales.*
2. *An employee under suspension cannot be granted increments.*

JUDGMENT

B.S. Sekhon, Vice Chairman— Two questions requiring adjudication in the instant Application are :

- (1) Whether a member of the Indian Police Service (for short the Service) under suspension prior to the date of enforcement of the revised pay admissible to a member of the Service as a result of implementation of the Fourth Pay Commission's recommendations is entitled to have his pay fixed on the basis of the revised pay scale and to be paid subsistence allowance on the upgraded pay, and
- (2) Whether a suspended member of the Service is entitled to be granted annual grade increment during the period of suspension.

2. The applicant, a member of the Service, was placed under suspension vide order dated April 1, 1985 (Ann. A, 1) passed by the Governor of Rajasthan in exercise of the powers conferred by rule 3(1) of the All India Services (Discipline and Appeal) Rules, 1969 (for brevity's sake called the Rules). In the copy endorsed to the Secretary to the Government, Department of Personnel, it was mentioned that the applicant be allowed to draw subsistence allowance to the extent of an amount equal to the leave salary which he would have drawn if he had been on leave on half pay during the period of suspension and dearness allowance etc. as admissible on such pay.

3. It is common ground between the parties that the applicant had been given the selection grade viz. Rs. 1800-100-2000. He made a representation to the Government on September 15, 1986 for grant of annual grade increment and the same was turned down vide order dated September 25, 1986 (copy Annexure 2), which has also been impugned. The reason given in the impugned order is that according to the rules the applicant is not entitled to the benefit of increment during the period of suspension.

4. The applicant seeks direction to the respondents to fix his pay in the revised pay scale of I.P.S. with effect from January 1, 1986, in the pay scale of Rs. 4500-5700, as also a direction for giving him annual grade increment during the period of suspension. He has also requested for quashing the impugned order.

5. As per the case set up in the Application, the applicant is very much a member of the Service in the selection grade, there is no legal provision to deny the revised pay scale to him—he cannot be discriminated in the matter and can not be deprived of the fixation in the revised pay scale merely on the basis of his being under suspension. Characterising the impugned order as per se illegal, arbitrary, unreasonable and discriminatory, the applicant has further stated that the suspension of an employee does not result in the suspension of contract of service, which, very much subsists, the annual grade increment could only be given to an employee on the completion of a period of one year of service irrespective of the fact whether he is suspended or not and that the impugned order lacks legal sanction.

6. The respondent has contested the Application. In the counter it is stated that the benefit of annual grade increment cannot be allowed to a member of the Service during the period of suspension in view of the provisions contained in rule 4 and 5B of the Rules and rule 20 of the All India Services (Leave) Rules, 1955 (hereinafter called 1955 Rules). The respondent has added that under rule 4 a member of the Service under suspension is entitled to subsistence allowance at an amount equal to the leave salary which he would have drawn if he had been on leave on half average pay and in addition, dearness allowance, if admissible on the basis of such leave salary, under the provisions of rule 4 of the Rules the applicant is not entitled to annual grade increment during the period of suspension, it is not a case of withholding of increment and that the applicant cannot be allowed pay as per the revised pay scale during the period of suspension. Another plea raised by the respondent is that under the Rules, the period of suspension can be computed towards grant of annual grade increment only if the officer is reinstated in service and the competent authority specifically orders that the period during which the officer had remained under suspension shall be treated as a period spent on duty as per rule 5B of the Rules and that on the conclusion of the enquiry which has led to the applicant's suspension, he would be given a chance to opt for the revised pay scale and fixation benefits. The respondent has refuted the allegation that the impugned order is illegal, arbitrary, unreasonable or discriminatory.

7. We have considered the fairly elaborate arguments addressed by the learned counsel for the parties at the Bar as also the pleadings and the documents on record.

8. Taking up the first question first, it would appear to be opposite to point out that the quantum of subsistence allowance payable to a member of

the Service during suspension is regulated by rule 4(1) of the Rules. The aforesaid sub-rule, in so far as is material, lays down that a member of the Service under suspension or deemed to have been placed under suspension by the Government concerned shall be entitled to receive from the Government a subsistence allowance at an amount equal to the leave salary which a member of the Service would have drawn if he had been on leave on half average pay or on half pay and in addition to dearness allowance, if admissible on the basis of such leave salary. Proviso to clause (a) provides for variation in the amount of subsistence allowance where the period of suspension exceeds six months. The aforesaid provision entitles a member of the Service under suspension or deemed suspension, subsistence allowance either equal to the amount of leave salary which he would have drawn had he been on leave on half average pay or on half pay plus dearness allowance admissible on the basis of such leave salary. As is borne out from the endorsement to the order of suspension, the applicant has been allowed such subsistence allowance as would be equal to the leave salary on half pay plus dearness allowance on such pay. Another fact which may be mentioned at this stage is that the scales of pay admissible to members of the Service have been revised on the basis of the accepted recommendations of the Fourth Pay Commission. This has been done by amending the Indian Police Service (Pay) Third Amendment Rules, 1987 which were made operative from January 1, 1986. The selection grade as per the amended pay rules is Rs. 4500-150-5700.

9. During the course of arguments, the learned counsel for the applicant strenuously urged that an order of suspension does not put an end to the service of a member, he continues to be a member of the Service and as such is entitled to the benefit of revised pay scale which is admissible to every member of the Service, whether working or under suspension. Another point made by the learned counsel was that denial of the revised pay scale and the resultant denial of subsistence allowance on the basis of the revised selection grade would be discriminatory as also infractive of Article 21 of the Constitution. The learned counsel also alluded to the concept and meaning of 'subsistence allowance'. According to the learned counsel, the payment of subsistence allowance on the basis of the pre-revised pay has the pernicious effect of depriving the applicant of the means of supporting life as also livelihood particularly in the context of spiralling cost of living. The learned counsel also placed reliance on the authorities referred to hereinafter.

10. The learned counsel for the respondent countered by submitting that the quantum of subsistence allowance has been rightly determined on the basis of provision of rule 4 of the Rules read with rule 20 of 1955 Rules and that in view of the Rules' position the applicant is not entitled to the fixation of pay and the revised selection grade and that the amount of additional pay, allowance etc. if any would be regulated in the light of the order to be made by the competent authority under rule 5B of the Rules. Refuting the allegation of discrimination and infraction of Article 21 of the Constitution, the learned counsel further submitted that the applicant has not assailed the validity of the Rules including that of 1955 Rules and the Pay Rules. Basing himself on rule 20 of 1955 Rules, the learned counsel for the respondent submitted that the applicant is entitled to such amount of subsistence allowance as is equal to half pay computed on the basis of rule 20. We may pause here and state that sub-rules (1) and (2) which are relied upon by the learned counsel for the respondent are in the following terms :

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"20. *Leave Salary.*—(1) A member of the Service on earned leave is entitled to leave salary equal to the pay drawn immediately before proceeding on earned leave.

(2) A member of the Service on half pay leave or leave not due is entitled to leave salary equal to half the amount specified in sub-rule (1).

The learned counsel laid particular emphasis on the word 'immediately' occurring in sub-rule (1) and built up the argument that the subsistence allowance would be equal to half the amount of leave salary which is computed on the basis of pay which the member was receiving immediately before proceeding on earned leave and that in the case of the applicant the subsistence allowance has to be determined only on the basis of half salary which he was drawing at the time he was placed under suspension i.e. on April 1, 1985. It was also added by the learned counsel that the applicant has been delaying the enquiry and as such cannot be permitted to take advantage of his own wrong. As regards the authorities cited by the learned counsel for the applicant, the learned counsel for the respondent pointed out that these authorities have not taken into account the Rules' position referred to by him and as such are of little avail to the applicant.

11. The proposition that an order of suspension does not put an end to the service of an employee and that notwithstanding the order of suspension he continues to be a member of the service admits of little doubt. The following observations in *Khem Chand v. Union of India*¹ and approved in para 19 in *State of Maharashtra v. Chandrabhan Tale*² and in para 15 in *O.P. Gupta v. Union of India and others*³ support the aforesaid basic proposition :

Para 19 :

"There is no doubt that the order of suspension affects a government servant injuriously. There is no basis for thinking, however, the because of the order of suspension, he ceases to be a member of the service.'

Para 15 :

"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 in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in *Khemchand v. Union of India* (supra) is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance—generally called subsistence allowance—which is normally less than the salary instead of the pay and allowance he would have been entitled to if he had not been suspended".

12. It is also well established that even though the order of suspension has injurious effect on the suspended employee, even so it is not a penalty imposed on him. It is thus manifest that notwithstanding the suspension order,

1. AIR 1963 SC 687.
2. 1983(3) SCC 387.
3. 1987(4) SCC 328.

the applicant continues to be a member of the Service. The pay of a member of the Service is regulated by the Pay Rules. The Pay Rules as amended by the Indian Police Service (Pay) Third Amendment Rules, 1987 provide for the selection grade in the pay scale of Rs. 4500-5700. The crucial issue upon which would hinge the answer to the first question is as to whether the expression 'pay' appearing in rule 4 of the Rules and rule 20 of the Leave Rules connotes the pay drawn by a suspended employee prior to the coming into force of the revised pay scales or whether it would also take in the revised pay introduced with effect from January 1, 1986 as per the aforesaid amendment to the Pay Rules.

13. In support of the assertion that the expression 'pay' denotes the pre-revised pay, the learned counsel for the respondent relied upon the expression 'pay drawn immediately before proceeding on earned leave' appearing in rule 20(1) of 1955 Rules. The learned counsel proceeded to say that it is the pay drawn by the applicant immediately before his suspension, that is, before April 1, 1985 which would determine the leave salary for leave on half pay and that in view of the provisions of rule 4 of the Rules the applicant is entitled to the amount so computed and not to the amount computed on the basis of the revised pay. This is so to say the narrower view.

14. The other view, which could be termed as a liberal view, propounded by the learned counsel for the applicant was that the applicant, notwithstanding the order of his suspension, is doubtlessly a member of the Service and that as the member of the Service in the selection grade are entitled to pay in the scale, Rs. 4500-5700, the applicant cannot be deprived of the benefit of the revised pay in the matter of computation of subsistence allowance. According to the learned counsel, a contrary view would be patently discriminatory and would also be grossly unjust and unfair.

15. For reasons set out hereinafter, we would prefer the view that the expression 'pay' in rule 4 of the Rules as also in rule 20 of 1955 Rules denotes the revised pay. These reasons are :

- (i) Since an order of suspension does not have the effect of snapping relationship subsisting between the employer and the employee and does not put an end to the employment, the applicant can be safely said to be a member of the Service during the period of suspension. By virtue of the aforesaid amendment to the Pay Rules, a member of the Service in the selection grade is entitled to pay in the scale of Rs. 4500-5700. The denial of the benefit of revised pay scale to the applicant would mean that the applicant is not being treated as a member of the Service in view of his suspension. This would not appear to be permissible under the Pay Rules.
- (ii) Disallowance of the benefit of revised pay for computing the subsistence allowance on the basis of a fortuitous circumstance of a member having been suspended prior to January 1, 1986 or even a date prior to the said date would appear to be a case of invidious and patent discrimination as compared to a case where a member of the Service is placed under suspension or is under deemed suspension on or subsequent to January 1, 1986. Suspended members of the Service are entitled to the same rights and privileges and are also subject to the same disabilities. Suspended members of the Service can thus be appropriately said to be similarly situated. Payment of differential

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subsistence allowance by splitting the aforesaid category of employees with reference to a particular date would not appear to be a case of reasonable classification. The basis for revising the pay by the Fourth Pay Commission is the rise in the cost of living and erosion in the purchasing power of the rupee. The higher cost of living equally affects adversely the member of the Service suspended prior to January 1, 1986 as their colleagues who may have been suspended on or after January 1, 1986. This would appear to be a case of treating equals as unequals and would thus seem to attract the frown of Articles 14 and 16(1) of the Constitution.

(iii) It may also be added that the narrower view canvassed by the learned counsel for the respondent would not appear to be consistent with the objective underlying the payment of subsistence allowance. The object of paying subsistence allowance clearly is to enable the suspended employee to support himself and dependent members of his family. The subsistence allowance should fairly take care of the reasonable expenses on such basic needs as education, clothing, housing, house-hold expenses, and necessities of life appropriate to the ~~need~~ to ~~notice~~ ~~not~~ ~~the~~ suspended employee. It would be pertinent to notice in this connection the observations of the Supreme Court in para 15 in O.P. Gupta, (supra), particularly, the meaning of the expression 'subsistence' set out in these observations :

'The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is 'to remain alive as on food, to continue to exist'. 'Subsistence' means—mean, of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in Rule 11 of the Rules, an order of suspension is not to be lightly passed against the government servant. In the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni*⁴ the court held that the expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment *prima facie* tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action.'

Pegging down of the subsistence allowance by computing the same on the basis of pre-revised pay scale of Rs. 1800-2000 would not be consistent with the objective underlying the payment of subsistence allowance. It is axiomatic that an interpretation which supports the objective should be preferred as against the interpretation which may defeat the objective. This would also justify the adoption of a liberal view.

(iv) Another reason which inclines us in favour of the liberal view is that a construction which is in conformity with the fundamental rights

4. 1983(1) SCC 124.

(24) 14

should be preferred as against the interpretation which may result in rendering a particular provision, unconstitutional. The liberal view would steer clear of the challenge on the basis of Articles 14 and 16(1) of the Constitution.

(v) Still another ground for which we would prefer the liberal view is that adoption of a narrower view would result in according an unjust and unfair treatment to the suspended members of the Service by restricting the quantum of subsistence allowance to an unreasonably low amount. Thus dictates of justice and fair play would also support the liberal view.

16. In view of the foregoing, we are of the view that the expression 'pay' appearing in rule 4 of the Rules as also in rule 20 of 1955 Rules should be interpreted liberally and further that it is a fit case for reading down the provisions of rule 20 of 1955 Rules while computing the subsistence allowance.

17. The contention of the learned counsel for the respondent that the order under rule 5B of the Rules which is to be passed by the competent authority after completion of the enquiry would take care of the difference would not derogate from the aforesaid view. Nor are we inclined to go into the reason of delay in the completion of the enquiry and the effect thereof as this question appropriately falls for determination in the other Application filed by the applicant. All the same it may be stated that according to the learned counsel for the respondent the delay is attributable to the applicant. The learned counsel for the applicant joining issue on this point submitted that the reasons for delay cannot be attributed to the applicant and that it is the respondent and the authorities concerned who have delayed the proceedings in the enquiry.

18. The contention of the learned counsel for the applicant that the payment of subsistence allowance by computing the pay on the basis of pre-revised pay is violative of Article 311(2) of the Constitution is difficult of acceptance. The facts of *Chandrabhan Tule* (supra), on which reliance was placed by the learned counsel were far dissimilar. In that case the subsistence allowance was reduced to a nominal sum of Rs. 1/- per month on conviction of the employee concerned, who was under suspension and his appeal against conviction was pending. The Supreme Court held that such an action which stultifies the right of appeal is consequently unfair and unconstitutional and that any departmental enquiry made without payment of subsistence allowance contrary to the provisions for its payment is violative of Article 311(2) of the Constitution.

19. As regards the submission of the learned counsel for the respondent that the applicant has not assailed the validity of the Rules as also of 1955 Rules, suffice it to point out that the question of constitutional validity of the Rules being a legal issue can be permitted to be raised at the time of arguments. In any case, this submission would not preclude the applicant from assailing the validity of denial of computation of subsistence allowance on the basis of revised pay on the touchstone of Article 14 of the Constitution. As already noted herein-above, such denial is offensive to Article 14 of the Constitution.

20. Another reason which inclines us to adopt a liberal view is that pegging down the subsistence allowance on the basis of pre-revised salary would be patently unjust and unfair.

21. In the premises, our answer to the first question is in affirmative.

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22. Adverting to the second question, the learned counsel for the applicant submitted that the withholding of increment is a penalty as envisaged by rule 6(1)(iv) of the Rules and as such the impugned order is unsustainable as it seeks to impose a penalty without following the procedure prescribed by the Rules. Reliance was placed by the learned counsel on the decision of the Supreme Court in *P.S. Sawhney v. R.K. Aggarwal and another*.⁵

23. The learned counsel for the respondent contended that it is not a case of withholding of increment but is a case of computation of the subsistence allowance on the basis of the provisions of rule 4 of the Rules read with rule 20 of 1955 Rules. Another point canvassed by the learned counsel for the respondent was that the decision in *P.S. Sawhney (supra)*, is inapplicable as the Rules position under the aforesaid Rules neither arose for consideration nor was it considered by the Supreme Court. Rule 4 of the Rules, and rule 20 of 1955 Rules lay down a formula for computation of subsistence allowance. Merely computation of the subsistence allowance on the basis of the aforesaid formula without including the increment is not tantamount to withholding of an increment and imposition of a penalty specified in rule 6(1) (iv) of the Rules. In *P.S. Sawhney (supra)*, the Apex Court had, in the facts and circumstances of that case, held that stoppage of increment by an order made in 1987 based upon some pending disciplinary proceedings which increment falls due to the appellant in November 1983 should not have been stopped in this way. The precise observations made by the Supreme Court are as under :

"We do not think the increment of 1983 should have been stopped in this way."

24. The instant case is not of stoppage or withholding of increment but is only a case of computation of the subsistence allowance on the basis of statutory rules.

25. Another submission made by the learned counsel for the applicant on the basis of rule 6(1) of the Rules was that the increment could be withheld only in the contingency specified therein i.e. failure to pass the departmental examination within the prescribed time and that the increment cannot be withheld in any other case. As held herein-above, it is not a case of withholding of increment. That apart rule 6(1) is not exhaustive and in any case does not knock out the application of rule 4 of the Rules and that of rule 20 of 1955 Rules. It may not be out of place to mention that the omission to include increment for purposes of computing the quantum of subsistence allowance cannot be said to be patently unfair or unreasonable, particularly, when regard is had to the fact that depending upon the order which may be made by the competent authority under rule 5B of the Rules on the conclusion of the enquiry, minor difference in this behalf would be payable to the applicant. The undeniable fact that some minor disadvantage is inherent in the suspension of a member coupled with the fact that other suspended members of the Service have not been shown to have been accorded a differential treatment would repel the charge of discrimination.

26. Another point canvassed by the learned counsel for the applicant was that on the basis of F.R. 24 increment is to be granted to a Government servant as a matter of course and that the withholding of increment is offensive to F.R. 24. This argument also misses the point that it is not a case of withholding

Retained SR 293/94

1) Material under should be filed with signature of the counsel and page numbers.



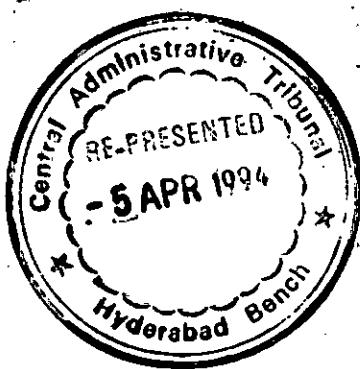
293/94

In the C. A. T.
Hyd Bench

Objection Complied with
- B
P. V. Rama

QA 174/94

Counter Affidav



manuscript
B. M. B.

Filed by:-
N. V. Rama
Addl. L.

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of increment, but is a case of computation of subsistence allowance on the basis of the statutory rules. In view of the provisions of rule 4 of the Rules and rule 20 of 1955 Rules, the action of the respondent in not including the increment for the purpose of computing the subsistence allowance admissible to the applicant cannot be said to be unsustainable. The impugned order (Ann. A.2) is thus not liable to be quashed and second question is answered in negative.

27. In view of all what has been said and discussed above, the respondent is directed to compute the subsistence allowance as also admissible dearness allowance by taking into account, the revised pay scale of selection grade Rs. 4500-5700 for the period subsequent to January 1, 1986 and to pay the arrears within a period of three months from the date of receipt of copy of the judgment.

28. The Application is disposed of accordingly. In view of the divided success of the parties, we make no order as to costs.

Application disposed of accordingly.

**CENTRAL ADMINISTRATIVE TRIBUNAL
(Madras Bench)**

*Original Application No. 516 of 1988
Decided on 14-6-1989*

CORAM

The Hon'ble Mr. C. Venkataaraman, Member (A)

Ram Prakash

—Applicant

Versus

*Central Board of Excise and Customs, Ministry of Finance
Dept. of Revenue, New Delhi & another.*

—Respondents

(i) Adverse entries, Role of the Tribunal—Adverse remarks recorded—Specific instances supplied, representation duly considered—Held the Tribunal could not go further to sit in appeal.

Held: Therefore, in a case like this, the role of the Tribunal is limited to seeing whether—

- (a) reasonable opportunity was afforded to the applicant to make an effective representation;*
- (b) the representation was considered by the competent authority taking into consideration the material brought out therein; and*
- (c) there is some material based on which the conclusion was reached by the competent authority to reject the representation and that it was not an arbitrary or whimsical decision. The role of the Tribunal is not to act as an appellate authority dealing with such representations.*

(Para 7)

(ii) ACR, when specific instances are required—Held remarks may relate to specific instances or those gathered by impressions—No specific instance, can be given in the latter type.

(Para 7)

(iii) ACRs, later improvement in performance—Adverse entries recorded in 1985—Urges he had a good record in 1988 he was recommended for a reward of Rs. 1 Lacs so entries should be expunged—

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

R.A/M.A/C.A. NO.

ORIGINAL APPLICATION NO. 174

OF 1994

TRANSFER APPLICATION NO.

OLD PETN. NO.

Certified

CERTIFICATE

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided).

Dated:

Counter Signed.

Court Officer/Section Officer.

Signature of the Dealing Asst.

YLKR

* * *

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.174/94

Between:

Date of Order: 2.5.95.

A.Mallaiah

...Applicant.

And

1. The Secretary,
Ministry of Defence,
Union of India,
2. The Scientific Adviser to the Minister
of Defence & Director General Research &
Development, Directorate of Personnel,
Ministry of Defence, DHQ P.O.
New Delhi.
3. The Director,
Defence Electronics Research Laboratory,
Chandrayanagutta Lines,
Hyderabad - 500 005.

...Respondents.

Counsel for the Applicant : Mr.K.Sudhakar Reddy

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

CORAM:

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

CONTD...

To

1. Ministry of Defence,
Union of India,
New Delhi.
2. The Scientific Adviser to the Minister
of Defence & Director General Research &
Development, Directorate of Personnel,
Ministry of Defence, DHQ, PO.,
New Delhi.
3. The Director,
Defence Electronics Research Laboratory,
Chandrayanagutta Lines,
Hyderabad - 500 005.
4. One copy to Mr.K.Sudhakar Reddy, Advocate,CAT,Hyderabad.
5. One copy to Mr.N.R.Devraj,Sr.CGSC,CAT,Hyderabad.
6. One copy to Library,CAT,Hyderabad.

YLKR

O.A.No.174/94

Date of Order: 2.5.95

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

* * *

The prayer of the applicant is for a direction to the respondents to grant him the annual increments in respect of the period for which he was under suspension.

2. Heard learned counsel for both the parties.

3. Similarly situated employees approached the Tribunal in OA.1331/93 and batch cases. In the order dt. 17.6.94 disposing of the said cases it was observed that payment of increments in respect of a suspended employee would stand postponed till the revocation of the suspension, when a decision would be taken whether or not to grant ^{pay} for the period of suspension. The batch cases were dismissed with the following order:-

"In view of the aforesaid, I am of the considered view that the applicants have not 'earned' their annual increments of pay during the period of suspension and hence it will not be proper to hold that such increments have been 'withheld' in their respect. The question of granting them pay and allowances including increments will, in any case, be considered by the disciplinary proceedings as per law".

4. In view of the above, this OA also deserves to be dismissed and it is accordingly dismissed. No order as to costs.

Abul Bari
(A.B.GORTHI)
Member (Admn.)

Dated: 2nd May, 1995

(Dictated in Open Court)

Abul Bari
SST
DEPUTY REGISTRAR(J)

sd

Contd...

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

THE HON'BLE SHRI A. V. HARIDASAN, MEMBER (C)

AND

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

DATED 25/95

ORDER/JUDGMENT

M.A. NO/R.P. NO./C.P. NO.

in

D.A. NO. 174/94

Admitted and Interim directions issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

YLKR

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