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O.A.NO.1584/95

JUDGEMENT

Dt: 14.3.96

(AS PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE CHAIRMAN)

Heard Shri Y.Appala Raju, learned counsel for the applicant and Shri V.Bhimanna, learned standing counsel for the respondents.

2. The applicant who is working as Postal Assistant was deemed to have been placed under suspension from 9.2.92. It is stated that the suspension was the result of involvement of the applicant in a prosecution for a criminal offence in the Criminal Court. He was being paid suspension allowance @ 50% of the pay. First review was done on 12.10.92 and the same allowance was continued. Second review was made on 6.1.93 and the subsistence allowance was increased to 50% of the existing allowance. In other words, as from that date, the subsistence allowance was @ 75% of the pay. On a further review, same quantum was maintained by the order dt.26.7.94. However, by the impugned order passed by the senior Superintendent of Post Offices, Hyderabad SE Division on 22.2.95, the subsistence allowance has been reduced to 50% of pay with effect from that date.

3. Shri Y.Appala Raju, learned counsel for the applicant submits that the impugned order is bad in law as it is violative of principles of natural justice inasmuch as no reasons are indicated in support of the action and the applicant was not given an opportunity to

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show cause against the proposed reduction. He submits that there was no justification for reducing the quantum from 75% to 50%.

4. Shri V.Bhimanna, learned standing counsel for the respondents submitted that the impugned order has been passed in exercise of the powers under F.R. 53(1)(ii)(a)(i) and the rules do not contemplate any notice to be given to the concerned employee and the amount of allowance can always be reduced at the discretion of the authority concerned. Apart from that, the learned counsel submits on instructions that the respondents have received information from the Police that the applicant was delaying the trial of the Criminal Case and that is how the period of suspension according to the respondents was being unjustifiably extended and in the circumstances the reduction in the quantum of allowance is justified.

5. The guidelines issued by the government of India under F.R. 53(2) clearly provide that it is permissible to reduce the amount of subsistence allowance once increased on the basis of first review upto 50% of the amount of allowance initially granted, if the period of suspension has been prolonged for reasons directly attributable to the Government servant i.e. by his adopting dilatory tactics. The text, therefore, to be applied is to find out whether reasons that have prompted permitted reduction of the amount are directly

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attributable to the Government servant so as to infer whether he has been indulging in adopting dilatory tactics due to which the period of suspension is getting unnecessarily prolonged. That cannot be determined unless the Government servant is given opportunity to show cause against the circumstances which are considered as directly attributable to him for adopting dilatory tactics. The impugned order does not even specify that the applicant was adopting dilatory tactics. It is not, therefore, possible to ^{sustain} ~~suspend~~ the impugned order and even though the authorities have power to reduce the amount, in the instant case, there has not been fair exercise of that power or discretion. It is also necessary to note that the so called dilatory tactics based on the Police record relating to the Criminal Case cannot perse be treated as dilatory tactics in the nature of misconduct so as to make the Fundamental Rule applicable. In any event, the reason stated is remote. We, however, do not conclusively express any opinion on this aspect but that alone requires opportunity to be afforded to the applicant to explain the position as regards the delay in the criminal case particularly when the respondents have chosen to rely on the report of the police.

6. In the result, the impugned order is hereby quashed. Respondents may, if so advised, issue a notice to the applicant to show cause of the proposed reduction enlisting the grounds on which it is proposed to be done and it will be open to the respondents after giving



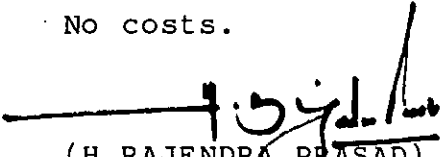
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opportunity to the applicant to show cause to pass such order as may be deemed proper. As a consequence of quashing the order dated 22.2.95, we direct that until fresh order on review is passed, the applicant may be entitled to be paid and shall be paid the subsistence allowance @ 75% of his pay. He shall be entitled to payment of the subsistence allowance at that rate with effect from 21.12.95. Arrears from that date till today shall be paid to the applicant and the amount shall continue to be paid @ 75% from today until fresh decision is taken by the respondents in the matter.

7. With the above directions, OA is disposed of.

No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(M.G. CHAUDHARI)
VICE CHAIRMAN

DATED: 14th March, 1996
Open court dictation

vsn


Deputy Registrar DCC

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To

1. The Director of Postal Services,
Hyderabad City Region, Union of India,
O/o the Chief Postmaster General,
Hyderabad.
2. The sr. Superintendent of Post Offices,
Hyderabad South East Division, Hyderabad-27.
3. One copy to Mr. Y. Appala Raju. Advocate, Plot No. 132,
Indraprastha Township (Phase. I) Vinaynagar, Saidabad, Hyd-59.
4. One copy to Mr. V. Bheemanna, Addl. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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