

(25)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 689 of 1996

DATE OF ORDER: 8th August, 1996

BETWEEN:

M.B. SEKHARA RAO

.. Applicant

and

1. The Senior Superintendent of Post Offices,
Guntur Division, Guntur,
2. The Postmaster General,
Vijayawada Region,
Vijayawada.

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI S. RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: SHRI V. BHIMANNA, Addl. CGSC

CORAM:

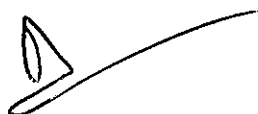
HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

JUDGEMENT

(AS PER HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.))

Heard Shri S. Ramakrishna Rao, learned counsel for the applicant and Shri V. Bhimanna, learned standing counsel for the respondents.

2. The applicant in this OA was convicted by IV AMM Court, Guntur on 25.8.93 in a fraud case of Indian Postal Orders and, therefore, he was placed under deemed suspension with effect from 25.8.93. His subsistence



allowance was fixed at 50% of the pay as per FR 53 and he was paid subsistence allowance at 50% of the basic pay from 25.8.93 to 30.11.93. After three months of paying him the subsistence allowance, the same was reduced by 50% by R-1 as per the powers vested under him under FR 53(i) on the basis that the applicant was responsible for the delay in the conduct of the inquiry under rule 19 of CCS (CCA) Rules, 1965. The orders were also issued for his continued suspension by Memo No.F4/82-82/XII dated 1.12.93. The applicant filed OA No.295/95 on the file of this Bench and that was disposed of by the order dated 4.5.95 setting aside the order of R-1 dated 1.12.93 (by the order dated 1.12.93, the subsistence allowance was reduced by 50% and only 25% of the basic pay was ordered to be paid as subsistence allowance) with all consequential benefits. In pursuance of that direction, the applicant was paid an amount of Rs.13,710/- by restoring his subsistence allowance to 50% with effect from 1.12.93 to 31.3.96. It was also ordered by the impugned order No.F.4/82-83 dated 22.3.96 (Annexure-I) to increase his subsistence allowance payable by 50% of the initial subsistence allowance with effect from 1.4.1996. This would mean that the applicant is entitled for 75% of the basic pay as subsistence allowance with effect from 1.4.96.

3. This OA is filed praying for a direction to the respondents to increase the enhanced subsistence allowance of the applicant herein to 75% of his basic pay with effect from 25.11.93 as the appplicant was placed

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under suspension on 25.8.93, as his case could not be disposed of due to the department's fault and he is also eligible for 75% of the pay with effect from 25.11.93 under FR 53. The ground for increasing the subsistence allowance to 75% of his basic pay as per FR 53 has been given in Para 5(1) and 5(3) of the grounds for relief. As per the above submission, the applicant submits that in terms of the observations in OA 295/95, the applicant was not held responsible for the delay in conducting the inquiry earlier to 25.11.93 and hence he is entitled for 75% of the basic pay as subsistence allowance from that date. It is also submitted that between the period from 25.11.93 to 31.3.96 there were no reasons to come to the conclusion that he cannot be paid the subsistence allowance @ 75% of his basic pay during that period. In view of the above submission, the applicant prays that the enhanced subsistence allowance of 75% should be predated to 1.12.1993 and the impugned order granting him the enhanced subsistence allowance with effect from 1.4.96 is misconceived and is not sustainable.

4. A reply has been filed in this connection. The reply elaborately deals in regard to the reduction of the subsistence allowance to 25% of the basic pay and its enhancement from 1.12.93 in pursuance of the direction in OA 295/95. It also states that the Tribunal's order in OA 295/95 has been complied with fully and hence the applicant has no case to approach this Tribunal by filing this OA. It is also stated in the reply that the

direction in OA 295/95 does not contemplate enhancement to subsistence allowance to 75% with effect from 1.12.93 and hence the prayer in this OA cannot be considered as no direction in this connection has been given in the previous OA.

5. The reply does not give any reason for the grounds made out by the applicant under Paras 5(1) and 5(3) of this OA which has been indicated above in Para 3 supra. When the learned standing counsel was questioned in regard to this contention, the learned standing counsel could not give any reply except saying that he was continued under suspension for a period from 1992 and hence the subsistence allowance was not increased to 75% with effect from 1.12.93. This reply in my opinion cannot be countenanced as reduction or enhancement to the substance allowance depends on the conduct of the employee in finalising the inquiry proceedings. If the employee stands in the way of finalising the inquiry proceedings, then there may be reason for reduction of the subsistence allowance. If there is no reason to come to the conclusion that ^{delay in} the inquiry proceedings are not attributable to the employee in question then the respondents should consider the case of the applicant for enhancement of the subsistence allowance in accordance with the rules and in case it has to be denied, a suitably worded reply has to be indicated at least in the file. But in view of the fact that there is no reply ^{even} in the reply affidavit in regard to the contentions in Paras

5(1) and 5(3) of the OA, it has to be held that this point has not been considered by the respondents in accordance with the law and it is now open to the respondents to reconsider the issue and decide the quantum of subsistence allowance payable to the applicant with effect from 1.12.1993.

6. In the result the following direction is given:-

R-1 should reconsider the decision of paying 75% of the subsistence allowance with effect from 1.4.96 in terms of the impugned letter dated 22.3.96 instead of from 1.12.1993 and take a decision whether the enhancement of quantum of subsistence allowance @ 75% of the basic pay with effect from 1.12.1993 is warranted or not. In case the decision to be taken is going to be adverse to the applicant, he should give a speaking order in this connection. Time for compliance is two months from the date of receipt of a copy of this order. The applicant is at liberty to initiate such legal proceedings as he deems fit in case he is going to be aggrieved by the decision to be taken by R-1.

7. The OA is ordered accordingly. No costs.

(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 8th August, 1996
Open court dictation.

vsn

7-2-96
D-2-5

..S..

O.A.NO.689/96

Copy to:

1. The Senior Superintendent of Post Offices,
Guntur Division, Guntur.
2. The Postmaster General,
Vijayawada Region,
Vijayawada.
3. One copy to Mr. S. Ramakrishna Rao, Advocate,
CAT, Hyderabad.
4. One copy to Mr. V. Bhimanna, Addl. CGSC,
CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One duplicate copy.

YLKR

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 8.8.96

ORDER/JUDGEMENT
O.A. NO./R.A./C.P. No.

in
O.A. NO. 689/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

No Spare Copy

