

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 511 of 2002

Jabalpur, this the 22nd day of August, 2003

Hon'ble Shri D.C. Verma, Vice Chairman (Judicial)
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

Gul Mohammad, aged about 55
years, S/o. Late Shri Khairat
Hussain, Ex-Supervisor 'B',
R/o. Ahmed Nagar Mohalla, P.O.
Adhartal, Jabalpur.

... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India
through the Secretary,
Ministry of Defence Production
Government of India,
South Block, New Delhi.
2. Chairman, Ordnance Factory
Board, 10-A, Shaheed Khudiram
Bose Road, Calcutta.
3. General Manager,
Vehicle Factory, Jabalpur.

... Responder

(By Advocate - Shri S.P. Singh)

O R D E R (Oral)

By Anand Kumar Bhatt, Administrative Member -

By this Original Application the applicant Gul Mohammad has requested the Tribunal for the following reliefs :

"i. The Hon'ble Tribunal be pleased to quash the impugned order dated 11.12.2001 passed by respondent No. 3.

ii. The Hon'ble Tribunal be further pleased to hold that the applicant entitled for, and thus respondents be directed for payment of subsistence allowances @ 75% of full salary and allowances for the period 29.11.92 to 6.6.94 after adjusting the subsistence allowance already received @ 50%.

iii. The Hon'ble Tribunal be further pleased to direct the respondents to pay the arrears comprising of the difference between the pension already received by the applicant from 6.6.94 to 25.8.2001 and the subsistence allowance @ 75% pay and allowances admissible at the rate applicable from time to time.

iv. The Hon'ble Court be pleased to direct the respondent to pay the petitioner the amount of HRA & City

Compensatory Allowance at the rate admissible during the period from 6.6.94 to 25.8.2001.

v. The Hon'ble Court be pleased to grant any other relief as thought fit by it."

2. The facts of the case in brief are that the applicant was issued two charge sheets. In one charge sheet he was suspended with effect from 29.08.1992 and the other charge sheet was issued on 01.10.1992, and an order of major penalty of reduction to a lower grade for a period of three years was passed on 24.01.1994 (Annexure A-1). Against this order the applicant had come to this Tribunal vide OA No. 396/1994, which was rejected on 30.08.1999. In the second case the applicant was suspended on 29.08.1992. Major penalty proceedings were started and charge sheet was issued on 04.12.1992. The disciplinary authority vide his order dated 06.06.1994 imposed the penalty of compulsory retirement. Appeal against the said order was rejected. The applicant had come to the Tribunal in OA No. 51/1995 in which vide order dated 19.05.2000 the case was remitted to the appellate authority for re-consideration of the quantum of punishment. After this the appellate authority vide his order dated 01.08.2001 (Annexure A-2/A) reduced the punishment from compulsory retirement of service to reduction in rank from Turner H.S. Gr. II to Tool Setter 'B' in the minimum of the pay scale.

3. The learned counsel for the applicant in his further submission has drawn our attention mainly to the provisions of FR-53, wherein it has been provided that where the period of suspension exceeds three months, the subsistence allowance after the first three months may be increased by 50% of the subsistence allowance, if the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant. The learned counsel stated that he is mainly pressing the relief with regard to

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increasing the subsistence allowance for the period of ~~sh related~~ suspension in the second departmental enquiry. The ~~Very well~~ period is 29.08.1992 to 06.06.1994.

4. The learned counsel for the respondents vehemently opposed the request. He stated that at no stage the enquiry in the two cases has been delayed on account of the competent authorities and the applicant is not eligible for getting the increased rate of subsistence allowance.

5. We have considered the case and have heard the learned counsel for the parties at some length.

6. FR 53 (1)(ii) is as follows :

"(ii) in the case of any other Government servant -
(a) a subsistence allowance at an amount equal to the leave salary which the Government 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 ;

Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows :-

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, nor directly attributable to the Government servant;

(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged, due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

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(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances."

Thus the provision in FR 53(1)(ii)(a), ~~the~~ proviso is that where the period of suspension is beyond 3 months and the delay in the enquiry is not directly attributable to the Government servant, the subsistence allowance may be increased by an amount not exceeding 50% of the subsistence allowance, i.e. 75% of the pay and the dearness allowance which he would have drawn if had been on leave of half pay. Whereas it is true that there has been no delay on the part of the authorities to complete the enquiry within the reasonable period of time, ⁱⁿ It is also true that the second enquiry the applicant was under suspension from 29.08.1992 to 06.06.1994 which is almost two years. The respondents have not stated that the applicant did not co-operate with the enquiry or the delay can be attributed to the applicant. The suspending authority has to review and pass necessary orders in sufficient time before expiry of the first 3 months for increasing or decreasing the subsistence allowance. Subsequent reviews are also provided though it is optional. However in ⁱⁿ this that case we do not find any such review has been done by the suspending authority or necessary orders have been passed before the expiry of the first three months.

7. In such circumstances it is appropriate if the subsistence allowance is increased to 75% of the pay and allowances as admissible on leave of half pay for the period from 29.08.1992 to 06.06.1994 when the order of compulsory retirement was passed. Accordingly it is ordered that for the suspension period from 29.08.1992 to 06.06.1994 the subsistence allowance be increased from 50% to 75% of the pay and allowances. As the counsel for the applicant in the oral submissions in the

Bar has stated that he does not want to press for other reliefs they are not being ~~considered~~ ^{considered in} ~~available to~~ as not been pressed.

8. In the result the Original Application is allowed. The order dated 11.12.2001 (Annexure A-5) stands modified accordingly. No costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

D.C. Verma
(D.C. Verma)
Vice Chairman (Judicial)

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पूछने से ओ/व्या..... जवाबदि.....
प्रतिलिपि अंको दिए गए -

- (1) शिवा, उच्च व्यापारिक निवास, निवास जबलपुर
- (2) आवश्यक श्री/प्रियंका/द्वा. निवास जबलपुर
- (3) प्रत्ययी श्री/डॉ/मर्टी/र्टु. निवास जबलपुर
- (4) व्यापार, ए.प्रा. , उच्च व्यापार निवास

मुद्रिता एवं आवश्यक कार्यालयों के सु

*S. Nagi, Adm
S. P. Singh, Adm*

*Thrustane
19/10/03*

*Tereel
19/10/03*