

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
JABALPUR

Original Application No. 650 of 1998

Jabalpur, this the 7th day of May, 2003

Hon'ble Mr. R.K. Upadhyaya - Administrative Member  
Hon'ble Mr. J.K. Kaushik - Judicial Member

Vijay Kumar Singh, S/o Shri R.C. Singh,  
aged 51 yrs (under suspension), R/o House  
No. 51, Shiva Nagar, Garha, Distt. Jabalpur

- APPLICANT

(By Advocate - Jr. TO Shri R.K. Gupta)

Versus

1. Union of India, through the Secretary,  
Ministry of Defence, New Delhi.

2. The Ordnance Factory Board of India, Calcutta.

3. General Manager, Gun Carriage Factory, Jabalpur.

4. The Works Manager, Administration, Gun Carriage  
Factory, Jabalpur

- RESPONDENTS

(By Advocate - Shri B.da. Silva)

O R D E R (Oral)

By J.K. Kaushik, Judicial Member -

Shri Vijay Kumar Singh has filed this application for seeking a direction to the respondents to make his fixation of pay in the revised scale at appropriate stage and accordingly he be given subsistence allowance.

2. The factual score leading to filing of this O.A. is that the applicant is continuing under suspension since long and he is being paid the subsistence allowance at the reduced rates which were prevalent at the time of his suspension and thereafter no revision thereof has been made and he is facing financial hardship. He filed O.A. No. 446 of 1994, which was disposed of vide order dated 20.4.1998 wherein the respondents were directed to examine his case and pass appropriate orders. But, his representation came to be rejected on the ground that the revised scale is not permissible under the Revised Pay Rules contained in SRO 18(E) dated 9.10.1997.

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3. ~~The application~~ has been contested on behalf of the respondents and a detailed counter reply has been filed. It has been submitted that as per the relevant rules the respondents rightly decided his representation and the applicant is not entitled to the revision of pay pending disposal of his departmental enquiry and so long as he continues under suspension on account thereof, on finalisation of the departmental enquiry only his pay will be revised.

4. We have heard the learned counsel of the parties and have carefully perused the records of this case.

5. The learned counsel of the applicant has submitted that the controversy involved in the present case is squarely covered on all fours by the Full Bench judgment of this Tribunal in the case of J.S.Kharat Vs. Union of India and another, 3/2003 Swamysnews 51(F.B.Mumbai) = 2002(3) ATJ 276. He has submitted that the matter does remain not/res integra, and he is entitled to the revised fixation of pay as per the recommendation of the 5th CPC and the consequential revision of subsistence allowance.

6. On the contrary, the learned counsel of the respondents has strenuously opposed the contention of the applicant and has submitted that as far as the judgment of the Full Bench is concerned, he has every respect for the same and his contention is that the rules do not provide for such a revision and he has rested his arguments on defence as set out in the counter reply to the OA.

7. We have considered the rival contentions raised on behalf of the parties. For appreciating the matter it would be expedient to extract the relevant portion containing the observations and findings of the Full Bench in the case of J.S.Kharat (supra), which is extracted as under-

"....As stated earlier, if the Rules are to be construed keeping in view the object for which it has to fulfil, the minimum requirement of the

two and save the Rule in respect of amount of subsistence allowance to be paid from frustrating the very object for which it is framed, the employee suspended before revision of pay scale is to be kept at par with similar Government employees who has been suspended after revision of pay scale. Therefore, the payment of subsistence allowance on the basis of scale of pay before revision cannot be a reasonable classification keeping in view the object to be achieved in paying subsistence allowance. For aforesaid reasons also, we consider that a suspended employee is entitled for subsistence allowance which is payable month to month has to be paid on the basis of revised pay scale which he would have been achieved had he been in service and the cases of Swarnambga B.R. Vs. Karnataka State Agricultural Marketing Board, 1988 (2) SLR 541, Khajuria v. State and others, 1991 (3) AISLJ 168 will apply to Government servants under suspension at relevant time.

A close analysis of the aforesaid judgment and the findings mentioned above, reveal that the controversy involved in the present case is squarely covered by the aforesaid judgment and we have no hesitation in following the same and deciding this OA on the lines of the said decision, since the rule position has also been examined in the said decision. Therefore, the contention of the learned counsel of the respondents stands repelled and on the other hand the submissions of the learned counsel of the applicant are well founded and have our concurrence.

8. In the premises, the OA has force and the same is hereby allowed. The respondents are directed to make fixation of the pay of the applicant in the revised pay scale as per the recommendations of the 5th CFC at appropriate stage and accordingly revise the subsistence allowance with effect from 1.1.1996. He would be entitled to consequential difference of arrears as a result of this order which may be paid to him within a period of three months from the date of receipt of a copy of this order. No costs.

*J.K. Kaushik*  
(J.K. Kaushik)  
Judicial Member

*R.K. Upadhyaya*  
(R.K. Upadhyaya)  
Administrative Member.

rkv.

Issued  
on 12/5/03

पूरांकन से ओ/न्या.....जबलपुर, दि.....

पुनिलिपि जगो शित:-

- (1) सचिव, जल नयन, जल नयन, जबलपुर
- (2) जल नयन, जल नयन, जबलपुर
- (3) प्रमुख, जल नयन, जबलपुर
- (4) जल नयन, जल नयन, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

*J.K. Kaushik*